United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

76-7293

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

LEONARD IMANUEL,

Plaintiff,

-against-

LYKES BROS. STEAMSHIP CO. INC.,

Defendant and Third Party
Plaintiff-Appellant,

-against-

TODD SHIPYARDS CORPORATION,

Third-Party Defendant-Appellee.

APPENDIX

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UNITED STATES COURT OF APPEALS
FILED
SEP 10 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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DOCKET ENTRIES

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

LEONARD IMANUEL,

Plaintiff,

-against-

LYKES BROS. STEAMSHIP CO. INC.,

Defendant and Third Party
Plaintiff-Appellant

-against-

TODD SHIPYARDS CORPORATION

Third-Party Defendant-Appellee

DATE	PROCEEDINGS
Feb. 3, 1972	Filed complaint - issued summons
Feb. 3, 1972	Filed Notice of Assignment, J. Palmieri
Mar.10, 1972	Filed answer
Mar.10, 1972	Filed answers to interrogatories propounded by the plaintiff to the defendant.
Apr.11, 1972	Filed summons with marshal's return; served Lykes Bros. S.S.Co.Inc. by Mr. Bengo on 2/9/72

DATE	PROCEEDINGS
May 11, 1972	Filed stipulation and order substituting Boal, Doti & Larsen as attorneys for Lykes Bros. Steamship Co., Inc. in place of Boal, McQuade & Fitzpatrick. So ordered - Palmieri, J.
July 12, 1972	Filed plaintiff's Note of Issue and Statement of Readiness.
July 12, 1972	Filed plaintiff's note of issue and Statement of Readiness.
Sept.21, 1972	Filed defendant third-party plaintiff Affidavit and Notice of motion for leave to file third-party complaint.
Sept.21, 1972	Filed Memo endorsed on Motion filed this date for leave to file 3rd party complaint. "Motion granted on consent. It is so ordered,"PALMIERI, J.
Nov. 1, 1972	Filed third-party complaint by third party plaintiff Lykes Bros. against Todd Shipyards.
Dec. 12, 1972	Filed summons with marshal's return; SERVED: Todd Shipyards Corp. 12-8-72.
Feb. 8, 1973	Filed interrogatories by third party defendant to be answered in writing by defendant and third-party plaintiff.
Feb. 8, 1973	Filed ANSWER of third party defendant to the third party complaint.
Mar. 19, 1973	Filed answers to interrogatories propounded by Todd Shipyards Corp. to Lykes Bros. S.S.Co.Inc., Def. 3-rd party plaintiff.
May 2, 1973	Filed plaintiff's answers to interrogatories propounded by 3rd party defendant, Todd Shipyards Corp.
June 5, 1973	Filed defendant & 3rd party Plaintiff interrogatories addressed to third party defendant.

DATE	PROCEEDINGS
Aug. 15, 1973	Filed deft's affidavit and notice of motion directing 3rd party deft. to answer interrogatories, returnable 8-30-73
Sept. 6, 1973	Filed stip. and order extending time for 3rd party plaintiff to answer interrogs. until Sept. 28, 1972 PALMIERI, J.
Nov. 7, 1973	Filed stip. & order adjourning of def. 3rd party pl.'s motion to 10/13/73 PALMIERI, J.
Nov.21, 1973	Filed memo endorsed on motion filed 8-15-73. Motion withdrawn. See letter of counsel for movant, Lykes Bros. S.S.Co. attached hereto dated 11/20/73. PALMIERI, J.
Dec.14, 1973	Filed 3rd party deft. answer to deft. & 3rd party pl. interrogatories.
Aug. 5, 1974	Filed Notice of Change of Firm from McLAUGHLIN, FISCELLA & CERVAIS to McLAUGHLIN & LAWLOR, in re Todd Shipyards Corp.
Aug. 22,1974	Filed Deft. & 3rd Party Pl. request for admission under Rule 36.
Sept. 5, 1974	Filed Deft. & 3rd party pl's notice of motion ret. 9-13-74 for an order that Todd Shipyards Corp. certain statements.
Sept.12, 1974	Filed Todd's Shipyards Corp.'s Response to request for admission.
Sept.20, 1974	Filed 3rd party defts. affdvt. in opposition to deft. Lykes Bros. motion.
Sept.20, 1974	Filed Deft. & 3rd party pl. motion to admit the truth of statements made in requests for admission.

DATE	PROCEEDINGS
Sept. 30, 1974	Filed memo-end on back of motion filed 9-5-74; motion denied without prejudice to its renewal pending 3rd party deft.'s compliance with Court's instructions. It is so ordered. PALMIERI, J. M/n
Dec. 6, 1974	Filed Deft's. Notice of Motion & Affidavit for renewal of its motion that the statements in the requests for admission be declared to have been admitted .... ret. 12/13/74.
Nov. 29, 1974	Filed judgment #74,913 that the deft. Lykes Bros. SS Co.Inc. may pay to the plaintiff the sum of $325,000 .... shall in no way prejudice any of the rights of deft. as against the 3rd party def. Todd Shipyards Corp PALMIERI, J. Judg. Ent. Clerk 12-2-74 ent.12-11-74 m/n
Dec. 12, 1974	Filed affvt. of T.H.Healey in opposition to notice of motion ret. 12/13/74
Dec. 16, 1974	Filed Memo End. on back of motion filed 12-6-74... Motion for expenses of depositions taking denied without prejudice to its renewal after trial. Deft. Todd to amend answer to all interrogs. and to answers relating to requests to admit Nos. 6 & 7 on or before 12/31/74 etc. SO ORDERED, PALMIERI J.
Dec. 17, 1974	Filed plaintiff's Satisfaction of Judgment #74,913.
Jan. 6, 1975	Filed 3rd party def. supplementary answers to interrogs.
Jan.17, 1975	Filed Def. and 3rd party pl's list of witnesses.
Jan.28, 1975	Filed Def. & 3rd party pl.'s notice of depositions of persons named.

DATE	PROCEEDINGS
Feb. 14, 1975	Filed 3rd party deft.'s Notice of Motion & affidavit for an order quashing the purported subpoenas served by Lykes Bros. and limiting and defining the depositions to be taken herein.
Feb. 14, 1975	Filed 3rd party def.Todd's Memo of Law in support of its motion for a protective order.
Feb. 21, 1975	Filed MEMO ENDORSEMENT on 3rd party deft's notice of Motion & Affdvt. for an order quashing subpoenas filed 2/14/75. Motion withdrawn by consent -- PALMIERI, J. n/m
Feb. 19, 1975	Filed Def. & 3rd party pl.'s amended notice of deposition.
May 9, 1975	Filed original copy, unsigned, Deposition of Russell Brierly..
May 12, 1975	Filed Deft. & 3rd pty. plaintiff's notice of motion striking the 3rd party deft's. answer for failure to furnish documents stipulated to be supplied one week after 2-25-75.
May 12, 1975	Filed Def. & 3rd party pl's. affidavit in opposition to Lykes Bros. motion seeking to strike the 3rd party defendant's answer.
May 15, 1975	Filed MEMO ENDORSEMENT on Def. & 3rd party pl.'s notice of motion to strike filed 5/12/75. Motion withdrawn on Consent. It is so ordered -- PALMIERI, J.
June 27, 1975	Filed 3rd party Deft's Notice for discovery and inspection.
Aug. 6, 1975	Filed 3rd pty. deft. Todd's Notice of Motion & Affidavit for an order compelling Deft. Lykes Bros. Steamship Co. to produce for deposition Chief Electrician Haag.

DATE	PROCEEDINGS
Sept. 29, 1975	Non-jury trial begun Sept.29, 1975 - Lykes Bros. Steamship Co. Deft. & 3rd Party Pl. Seeking Indemnity from Todd Shipyard Corp. for monies expended in connection with settlement in Plaintiff's case.
Sept. 30, 1975	Non-jury trial con't. Sept.30, 1975., Oct. 1, 1975, Oct. 2, 1975, Oct. 3, 1975
Oct. 7, 1975	Non jury trial con't. and concluded Oct. 7, 1975 - total trial days are six.
Dec. 19, 1975	Filed transcript of record of proceedings dated 9-29, 9-30, 75; 10-1-2-3-7 1975.
Jan. 7, 1976	Filed Deft. & third party pl's proposed findings of fact.
Jan. 7, 1976	Filed deft. & third party pl's. conclusions of law.
Jan. 13, 1976	Filed third party deft's. post trial brief.
Jan. 13, 1976	Filed third-party deft's. proposed findings of fact.
Jan. 23, 1976	Filed third-party deft's. reply memorandum.
Jan. 29, 1976	Filed brief of third-party plaintiff.
Feb. 10, 1976	Filed Third-party def.'s reply to deft. & third party plaintiff's second proposed findings of fact submitted under the pseudonym of "brief".
Feb. 17, 1976	Filed comments on third party deft.'s proposed findings of fact.
Feb. 17, 1976	Filed deft. & third party pl's answer to 3rd party deft's. reply memorandum

DATE	PROCEEDINGS
Feb. 17, 1976	Filed deft. & third party pl.'s answer to third-party deft's. reply brief and affidavit.
Apr. 12, 1976	Filed deft. & 3rd pty. pl. pre-trial order.
Apr. 23, 1976	Filed Opinion #44294 - for the reasons stated, the findings of fact and conclusions of law indicated are intended to substantiate and to amplify what already has been said, and to demonstrate that deft. & third-party plaintiff Lykes has not sustained its claim of indemnity against third-party deft. Todd Shipyards. Under the circumstances an award of atty's fees to Todd would be unjustified. Submit proposed judgment on notice consonant herewith. PALMIERI
May 12, 1976	Filed manuscript of record proceedings dated 10/7/75.
May 12, 1976	Filed judgment - that deft. & third party pl. Lykes Bros. Steamship Co. Inc's claim against the third-party deft. Todd Shipyards Corp. is hereby dismissed and judgment is entered in favor of the third party deft., together with costs to be taxed, with the exception that the cost of the plastic model of the SS NANCY LYKES' engine room elevator, entered as an exhibit by the third party deft. shall not be taxed. No other costs shall be allowed any party. PALMIERI, J. Judgment entered 5-12-76. Clerk (M/n)
May 12, 1976	Filed memo endorsed on judgment filed 05-12-76. The attached judgment has been prepared by the Court with a view to making clear and unambiguous provision for the payment of costs. The Court declines to permit

DATE	PROCEEDINGS
	special allowances for either side, etc. to the extent that anything in the opinion of this Court dated 4/23/76, can be construed to the contrary to what is said here, the provisions of this judgment shall be considered to be superseding and binding. PALMIERI, J. (m/n)
May 25, 1976	Filed Deft. & third party pl's objections to the Bill of Costs of Todd Shipyards Corporation, third party def.
May 26, 1976	Filed Bill of Costs as taxed in the sum of $758.15 in favor of third party deft. as against Lykes Bros. S.S. and docketed as Judgment # 76-480.
June 9, 1976	Filed Notice of Appeal - that deft. and third party pl. appeals to USCA from the final judgment entered on 5-12-76 dismissing Pet. of Deft. & third party plaintiff against third-party deft. m/n
June 9, 1976	Filed undertaking for costs on appeal in the sum of $250.00 Federal Insurance Co.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

LEONARD IMANUEL

Plaintiff,

-against-

LYKES BROS. STEAMSHIP CO.INC.,

Defendant & Third Party Plaintiff

-against-

TODD SHIPYARDS CORPORATION,

Third Party Defendant

----------x

72 CIV.498 (ELP)

THIRD PARTY COMPLAINT

The Third Party Plaintiff, LYKES BROS. STEAMSHIP CO. INC. by its attorneys, BOAL, DOTI & LARSEN, for its third-party complaint against TODD SHIPYARDS CORPORATION, alleges upon information and belief, as follows:

1. That at all times hereinafter mentioned LYKES BROS. STEAMSHIP CO.INC., was and still is a corporation organized and existing under and by virtue of the laws of the State of Louisiana, with its principal office and principal place of business in New Orleans, Louisiana, and was at all times hereinafter mentioned the owner of the SS NANCY LYKES.

2. That at all times hereinafter mentioned TODD SHIPYARDS CORPORATION was and still is a New York corporation with an office and place of business in the Borough of Manhattan, County, City and State of New York.

3. That on or about July 2, 1971, the SS NANCY LYKES, a vessel owned by the Defendant and Third Party Plaintiff LYKES BROS STEAMSHIP CO.INC., was delivered to the Defendant's yard in Galveston, Texas for elongation and repairs.

4. That in the course of the elongation of the vessel and making repairs, TODD SHIPYARD CORPORATION moved machinery and other heavy objects out of and into the engine room through the elevator shaft and in so doing inflicted damages upon and to the elevator cables.

5. That on or about December 10, 1971, while the vessel was being inspected and checked by representatives of the Defendant and Third Party Plaintiff, the elevator was inspected and, in the course of this inspection, moved to the top of the elevator shaft. At that point the assistant electrician was making certain checks on top of the elevator, amd while so doing, the elevator fell to the bottom of the shaft. The assistant electrician, LEONARD IMANUEL, suffered severe, painful and crippling injuries.

6. That heretofore and on or about the 3rd day of February, 1972, LEONARD IMANUEL, the Plaintiff, commenced action in this court against Defendant and Third Party Plaintiff to recover damages for injuries he claimed he sustained on the 10th day of December, 1971, when the elevator in the engine room of NANCY LYKES fell while he was inspecting it. According to the complaint, it is claimed that the elevator fell because the cable holding it broke, and that it broke because it was defective.

7. That the cable holding the elevator was in sound condition when the NANCY LYKES was delivered to the Third Party Defendant TODD SHIPYARDS CORPORATION in July, 1971, and that the break on December 10, 1971, was due to damage caused to the cable by the Third Party Defendant in moving material in and out of the engine room through the elevator shaft.

8. That by reason of having undertaken to do certain work on and to the NANCY LYKES and by holding itself as competent to perform those services, it was the duty of the Third Party Defendant TODD SHIPYARDS CORPORATION to perform the services undertaken in a safe and workmanlike manner which included providing sufficient competent personnel to properly carry out the work undertaken and avoid any

damage to the ship and, in particular when using the elevator shaft in the engine room, to avoid damaging in any way the cables.

9. That the Defendant and Third Party Plaintiff will necessarily incur counsel fees, costs and disbursements in defense of this action.

10. That if the plaintiff recovers against the Defendant and Third Party Plaintiff, LYKES BROS. STEAMSHIP CO,INC., because of the matters alleged in the Complaint, said liability will have been brought about by the failure of the Third Party Defendant TODD SHIPYARDS CORPORATION to perform the work undertaken by it in a safe and workmanlike manner to carry out the duties which rested upon it by reason of its having undertaken to make changes and repairs to the SS NANCY LYKES.

WHEREFORE, it is respectfully prayed that if the Third Party Plaintiff LYKES BROS. STEAMSHIP CO. INC. is held liable to the Plaintiff in this action, then the Third Party Defendant TODD SHIPYARDS CORPORATION should be required to indemnify the Third Party Plaintiff for all damages for which it is cast, including all reasonable costs and counsel fees, and that the court grant the Third Party Plaintiff such other and further relief as the Court may deem just and proper.

BOAL, DOTI & LARSEN
Attorneys for Third Party Plaintiff
Office & Post Office Address
225 Broadway
New York, N.Y. 10007
233-2500

New York, N.Y.
August 28, 1972

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

LEONARD IMANUEL,

Plaintiff,

-against-

LYKES BROS. STEAMSHIP CO.INC.,

Defendant and Third Party Plaintiff,

-against-

TODD SHIPYARDS CORPORATION,

Third Party Defendant

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CIVIL ACTION FILE
No.72 Civ.498 (ELP)

THIRD PARTY DEFENDANT DEMAND A JURY TRIAL

The third party defendant, TODD SHIPYARDS CORPORATION, answering the third party complaint by its attorneys, McLAUGHLIN, FISCELLA & GERVAIS, alleges upon information and belief as follows:

AS TO THE CAUSE OF ACTION

FIRST DEFENSE

FIRST: Denies having knowledge or information sufficient to constitute a belief as to each and every allegation contained in paragraphs marked "1", "5", "6" and "9" of the third party complaint.

SECOND: Denies each and every allegation

contained in paragraph marked "3" of the third party complaint except admits that the SS NANCY LYKES remained at the third party defendant's yard in Galveston, Texas from June 11th to December 7th, 1971, and begs leave of the Court to refer to the contract of repair between LYKES BROS. STEAMSHIP CO.INC. and TODD SHIPYARDS CORPORATION.

THIRD: Denies each and every allegation contained in paragraphs marked "4", "7", "8" and "10" of the third party complaint and leaves all questions of law for this Court to determine.

SECOND DEFENSE

FOURTH: If the plaintiff sustained any injuries as alleged in the third party complaint which is expressly denied, said injuries were caused, in whole or in part, by said plaintiff's own negligence and were not caused or contributed to in any manner by the third party defendant.

WHEREFORE, the third party defendant, TODD SHIPYARDS CORPORATION, demands judgment dismissing the third party complaint herein together with costs and disbursements of this action.

McLAUGHLIN, FISCELLA & GERVAIS
By Albert T.Gervais
A member of the firm
Attorneys for Third Party Defendant,
TODD SHIPYARDS CORPORATION
Office & P.O.Address
80 John Street
New York, New York, 10038
248-4430

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

LEONARD IMANUEL,

Plaintiff,

-against-

Index 72 Civ.498 (ELP)

LYKES BROS. STEAMSHIP CO., INC.,

Defendant and Third Party
Plaintiff,

-against-

TODD SHIPYARDS CORPORATION,

Third Party Defendant

----------x

INTERROGATORIES propounded by the Defendant and Third-Party Plaintiff, LYKES BROS. STEAMSHIP CO.INC., to the Third Party Defendant, TODD SHIPYARDS CORPORATION, pursuant to Rule 33 Federal Rules of Civil Procedure, to be answered under oath, separately, fully and in writing by the Third Party Defendant Todd Shipyards Corporation (hereinafter referred to as "TODD")

1. Did Todd move any objects out of the engine room of the NANCY LYKES between December 2 and December 11, 1971 ?

2. If you answer the above interrogatory in the affirmative, state

(a) What objects were removed from the engine room, giving the date on which each object was so removed.

(b) By what means they were removed; and

(c) By what route they were removed out of the engine room.

3. Were objects moved into the engine room of the NANCY LYKES between the dates of December 2 and December 11, 1971 ?

4. If you answer Interrogatory No.3 in the affirmative, state

(a) The objects which were moved into the engine room and the dates on which they were moved into the engine room.

(b) The means by which they were moved into the engine room, and

(c) The route used to move these objects into the engine room.

5. State the names and addresses of each and every employee of Todd who took part in removing the objects from the engine room and moving objects into the engine room, including the operators of any cranes used in the operation.

Dated: New York, N.Y. June 4, 1973.

Yours, etc.,

BOAL, DOTI & LARSEN
By ARTHUR M.BOAL
Member of the Firm
Attorneys for Defendant and Third Party Plaintiff

TO: McLAUGHLIN, FISCELLA & GERVAIS,ESQS.,
Attorneys for Third Party Defendant
80 John Street
New York, N.Y. 10038 (248-4430)
FIELDS & ROSEN, ESQS.,
Attorney for Plaintiff
366 Broadway
New York, N.Y. 10013

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

LEONARD IMANUEL,

Plaintiff,

-against-

LYKES BROS. STEAMSHIP CO. INC.,

Defendant and Third Party Plaintiff

-against-

TODD SHIPYARDS CORPORATION,

Third Party Defendant

----------x

ANSWERS TO INTERROGATORIES

72 Civ.498 ELP

S I R S:

THIRD PARTY DEFENDANT, TODD SHIPYARDS CORPORATION, for its answers to interrogatories propounded by defendant and third party plaintiff, LYKES BROS. STEAMSHIP CO.INC., states upon information and belief:

1. No.
2. Not applicable
3. No.
4. Not applicable
5. Not applicable

Dated: New York, N.Y.
October 5, 1973

McLAUGHLIN, FISCELLA & GERVAIS
By James M.McLaughlin
Member of the Firm
Attorneys for Third Party Defendant
TODD SHIPYARDS CORPORATION
80 John Street
New York, N.Y. 10038

(continued)

TO
BOAL, DOTI & LARSEN, ESQS.,
Attorneys f r Def. & Third
Party Plaintiff
225 Broadway
New York, N.Y. 10037

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

LEONARD IMANUEL,

Plaintiff,

-against-

LYKES BROS. STEAMSHIP CO. INC., 72 Civ.498 ELP

Defendant and Third-Party
Plaintiff,

-against-

TODD SHIPYARDS CORPORATION,

Third-Party Defendant
----------x

REQUEST FOR ADMISSION UNDER RULE 36

The defendant and third-party plaintiff, LYKES BROS. STEAMSHIP CO. INC., requests the Third-party defendant TODD SHIPYARDS CORPORATION, within thirty days after the service of this request, to make the following admissions for the purposes of this action only, and subject to all pertinent objections to admissibility which may be interposed at the trial, that each of the following statements is true:-

1. The Third-Party Defendant, while the SS NANCY LYKES was at its yard in Galveston, Texas, in 1971, moved objects out of and into the engine room through the engine room elevator shaft.

2. The Third-party defendant, moved various objects into and out of the engine room of the SS NANCY LYKES through the engine room elevator shaft while the SS NANCY LYKES was in its yard in 1971.

3. On or about December 4th or 5th, 1971, the Third-Party Defendant moved a feed pump suction manifold out of the engine room of the SS NANCY LYKES.

4. On or about December 4th or 5th, 1971, the Third-party defendant moved a feed pump suction manifold into the engine room of the SS NANCY LYKES through the engine room elevator shaft.

5. In December of 1971, the Third-party defendant moved objects other than a feed pump suction manifold into and out of the engine room of the SS NANCY LYKES through the engine room elevator shaft.

6. The Third-party defendant was paid $1911 for removing the feed pump suction manifold from the engine room of the SS NANCY LYKES and moving into and installing in the engine room of the SS NANCY LYKES a feed pump suction manifold which had been removed from the SS JEAN LYKES.

7. The Third party defendant was paid $1120 for moving the feed pump suction manifold from the SS JEAN LYKES and repairing and installing in theSS JEAN LYKES the feed pump suction manifold which had been removed from the SS NANCY LYKES.

Dated: New York, N.Y. August 1, 1974.

BOAL, DOTI & LARSEN
By Arthur M.Boal
Member of the firm
Attorneys for Defendant and Third-Party Plaintiff
225 Broadway
New York, N.Y. 10007 (233-2500)

TO: McLaughlin, Fiscella & Gervais, Esqs.,
Attorneys for Third Party Defendant
TODD SHIPYARDS CORPORATION
80 John Street
New York, N.Y. 10038

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

LEONARD IMANUEL,

Plaintiff,

-against-

72 Civ. 498 ELP

LYKES BROS. STEAMSHIP CO,INC.,

Defendant and Third Party Plaintiff,

RESPONSE TO REQUEST FOR ADMISSION

-against-

TODD SHIPYARDS CORPORATION,

Third Party Defendant

----------x

TODD'S SHIPYARDS CORPORATION, the third-party defendant, makes the following statement in response to the request for admissions of facts under Rule 36 served upon it by defendant and third-party plaintiff LYKES BROS. STEAMSHIP CO. INC. on August 1, 1974.

Request No.1. Third party defendant TODD SHIPYARDS denies the truth of the matter set forth in Request No. 1.

Request No.2. Third party defendant TODD SHIPYARDS denies the truth of the matter set forth in Request No. 2.

Request No.3. Third-party defendant TODD SHIPYARDS denies the truth of the matter set forth in Request No.3.

Request No.4. Third-party defendant TODD SHIPYARDS denies the truth of the matter set forth in Request No. 4.

Request No.5. Third-party defendant TODD SHIPYARDS denies the truth of the matter set forth in Request No. 5.

Request No.6. Third-party defendant TODD SHIPYARDS denies the truth of the matter set forth in Request No. 6.

Request No.7 Third-party defendant TODD SHIPYARDS denies the truth of the matter set forth in Request No. 7,

Dated: New York, New York September 11, 1974.

McLAUGHLIN & LAWLOR

By_____
A Member of the firm
Attorneys for Third-Party Defendant
TODD SHIPYARDS CORPORATION
Office & P.O.Address
80 John Street
New York, N.Y. 10038
(212) 248-4430

TO:
BOAL, DOTI & LARSEN, ESQS.,
Attorneys for Defendant and
Third Party Plaintiff
LYKES BROS. STEAMSHIP CO.INC.,
225 Broadway
New York, New York 10007
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FIELDS & ROSEN, ESQS.,
Attorneys for Plaintiff
366 Broadway
New York, N.Y. 10013

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LEONARD IMANUEL,	:	
Plaintiff,	:	
-against-	:	
LYKES BROS. STEAMSHIP CO., INC.,	:	72 Civ. 498 (E.L.P.)
Defendant and Third Party Plaintiff,	:	SUPPLEMENTARY ANSWERS TO INTERROGATORIES
-against-	:	
TODD SHIPYARDS CORPORATION,	:	
Third-Party Defendant	:	

Third Party Defendant, TODD SHIPYARDS CORPORATION, for its Supplementary Answers to Interrogatories propounded by Third Party Plaintiff, LYKES BROS. STEAMSHIP CO., INC., alleges upon information and belief:

1. Yes.

2. On Information and belief:

A) Auxiliary Feed Pump Discharge Manifold was removed on December 9.

A No.2 Salt Water Overboard Brine Pump was removed on December 9.

A No.1 and No.2 Sanitary Pump was removed on December 9.

A 3/4" Regulator Valve was removed on December 9.

A 3" Relief Valve of the Evaporator Distiller Feed Line was removed on December 9.

B) Unknown. Since there is no one set method this interrogatory cannot be answered in the form asked and it is suggested that further particulars be more properly developed during the oral deposition of Todd's employees.

C) No objects were removed through the elevator shafts. Access plates were removed from the upper and lower Engine Room areas. Openings were cut in the bulkheads to allow passage of material.

3. Yes.

4. A) On December 9, on information and belief, the following were moved into the Engine room.

1) Regulator Valve.
2) Sanitary Pump Strainer.
3) No. 1 and No.2 Sanitary Pumps
4) No. 2 Salt Water Overboard Brine Pump.
5) Feed Pump Suction Manifold.
6) 3" Relief Valve.

B & C) See answers to 2. B & C.

Todd does not have the names and addresses of each and every employee who took place in transferring such objects.

5. The following individuals on present facts would have general knowledge of the situation.

Mr. Joseph G. Kremenic, Ship Superintendent

Mr. L. Gabriles, Ship Superintendent

Mr. H.A.Suhler, General Superintendent

Mr. R.F. Nelson, Machinist, Foreman

Mr. L.F.Rosenboom, Assistant Foreman, Machinist.

DARBY, HEALEY & STONEBRIDGE
Attorneys for Third Party Defendant

By_____
A Member of the Firm
19 Rector Street
New York, New York 10006

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LEONARD IMANUEL, Plaintiff, -against- LYKES BROS. STEAMSHIP CO., INC., Defendant and Third Party Plaintiff, -against- TODD SHIPYARDS CORPORATION, Third-Party Defendant	72 Civ. 498 ELP AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

THOMAS H. HEALEY, being duly sworn, deposes and says that he is a member of the firm of DARBY, HEALEY & STONEBRIDGE, trial counsel for the Third-Party Defendant, TODD SHIPYARDS CORPORATION.

This affidavit is submitted in opposition to the Notice of Motion brought on by the Defendant on December 5, 1974 and returnable before the Honorable Edward L. Palmieri on December 13, 1974.

Defendant alleges that Todd's reply to shipowner's request for admissions should be striken as the replies are incorrect. Your deponent objects to this part of shipowner's request since a full review of the materials available indicates that the answer submitted to these requests by Todd's attorney of record are correct.

Shipowner also requested permission to take depositions of witnesses in Galveston, Texas. Your deponent fully agrees that the testimony of witnesses must be taken to resolve issues of fact. However, your deponent opposes shipowner's application that Todd should pay all expenses involved in these depositions. There is neither a factual nor legal basis submitted by shipowner's counsel to sustain its request. It is submitted to this Court that testimony of ship's witnesses are as urgently needed as those of Todds. A fair and practical procedure would be to have shipowner's counsel make its witnesses available and a fair schedule be set up and let all parties pay their own costs without waiving its right to recover what costs are allowable by law if the matter proceeds to trial.

In fairness to this Court, some further explanation as to why it appears that the original response of Todd to the shipowner's request for admissions are proper. Your deponent is aware of no rule which requires such explanation but courtesy dictates this explanation. As the Court recalls, the original

plaintiff was injured when the vessel's elevator cables parted. The ship had a surveyor investigate the machinery after the event and the surveyor's report noted that he could find no cause of the mishap but apparently not to come up completely empty, the surveyor went on to imagine that he "could only suggest the possibility that during the course of the recent conversion materials had been removed ...through the elevator shaft." This speculation is fairly well contradicted by factual testimony, not opinion of the ship's electrician, Mr. Herman Haag. He noted that as a point of fact, the elevator had not been taken care of in the eight months before it came into the yard. The Chief Engineer had voiced concern for the safety of the elevator because "it was out of service for so long", and he noted that the accident occurred while the ship's personnel were checking out their seldom used and less maintained piece of equipment. Mr. Haag noted there were no Todd people around at the time of the accident and interestingly enough, he stated "I have no idea what could have caused the cable to break."

The ship's First Assistant Engineer, Thomas J. Bulson, also noted that the elevator was not operating properly when he first joined the ship. Despite the evidence of his

own employees, that the likely cause of the mishap was their own negligence in servicing the elevator, shipowner chose to pursue the speculation of his paid expert surveyor and in further evidence thereto caused the request for admissions, which is the subject of this motion, to be served hoping to accomplish through a procedural technicality what could not be accomplished by the facts.

These requests for admission are seven in number. The first five specifically state that Todd moved materials through the engine room elevator shaft. The last two infer the same. Your deponent has carefully reviewed all material at hand. Based upon the information from, among others, Mr. Joseph G.Kremenic, Todds Ship Superintendent, Mr. L. Gabriles, Ship Superintendent, and Mr. John Griggs, Contract Administrator, it would appear that Todd never moved material through the elevator shaft. Todd cut access holes in the side of the number three hold and holes between the number three and four holds and in addition, unbolted an access plate so that the materials could be moved through these apertures. The elevator shaft was never used to move material. Air and water lines were run through the elevator shaft into the engine room.

In view of this material, it is clear that answers 1 through 5 must remain unchanged.

It is called to the Court's attention that answers 3, 4 and 5 refer to the feed pump suction manifold, as do items 6 and 7. Items 6 and 7, if standing alone would be correct since Todd did move the feed pump suction manifold. The other requests for admissions make it appear that it was moved through the engine room elevator shaft.

Although the shipowner does not request further answers to interrogatories a review of the item reveals to your deponent that the answers heretofore filed are incorrect. Todd did move objects out of the engine room of the S/S NANCY LYKES and as indicated above, they were removed through various holes and access plates and never through the elevator shaft. At the present time, it is impossible to tell exactly all of the objects that were removed into the engine room between December 2 and December 11. It is also impossible to enumerate every Todd employee who might have taken some part in moving materials. The following men, however, have knowledge of the situation.

Mr. Joseph G. Kremenic, Ship Superintendent

Mr. L. Gabriles, Ship Superintendent

Mr. H.A.Suhler, General Superintendent

Mr. R. F. Nelson, Machinist, Foreman

Mr. L.F.Rosenboom, Assistant Foreman, Machinist

Your deponent is prepared to work out a discovery schedule with shipowner's counsel. As set forth above, your deponent suggested that the parties attempt to reach agreement as to the proper witnesses to be deposed and convenient times and places for accomplishing the depositions. Your deponent hereby requests that if it be convenient for the Court, that a conference be had between the parties before the Court on December 13 in order to accomplish this result.

In conclusion, it is submitted to this Court that the answers to the request for admissions in the form in which those requests were drawn up are entirely proper. Investigation indicates that there is a sharp question of fact as to whether Todd conducted any activity within this elevator shaft and that the proper way to determine this question is not through attempting to convert procedural remedies into substance but by making full and fair examination of both the shipowners and Todds witnesses in an effort to reach the truth.

WHEREFORE, your deponent prays that shipowner's application be denied in its entirety and that instead, a schedule for substantial discovery be set by this Court and for such other and further relief as may be proper.

Thomas H. Healey

Sworn to before me this
11th day of December, 1974

STIPULATION THAT THE ACCESS OPENINGS FROM THE ENGINE ROOM TO THE ADJACENT HOLD WERE CLOSED ON OR BEFORE OCTOBER 15, 1971, WAS MADE AT THE TIME OF TAKING OF THE DEPOSITION OF MR. BRIERLY IN GALVESTON ON MARCH 26, 1975.

4 MR. HEALEY It is stipulated and agreed by and between counsel for Lykes and counsel for Todd that the two --

MR. BOAL Openings from.

MR. HEALEY I am trying to -- yes, the two access openings, one of which was formed by an arm bolt and access plate, and second of which had been formed by cutting through the bulkhead, had been completely closed up by no later than October 15th, 1971.

Does that cover it ?

MR. BOAL: That covers it.

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LEONARD IMANUEL,

Plaintiff,

-against-

LYKES BROS. STEAMSHIP CO., INC., 72 Civ.498 (ELP)

Defendant and Third-Party Plaintiff, PRE-TRIAL ORDER

-against-

TODD SHIPYARDS CORPORATION,

Third-Party Defendant

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2(a) The third-party complaint states a cause of action for indemnity under general admiralty and maritime law over which the Court has jurisdiction.

3(a) The parties stipulated that the following facts are not in dispute in this action (each party reserving the right to object to the materiality of any such stipulated fact and its relevancy to the issues of the case):

(1) The plaintiff, LEONARD IMANUEL, was employed by Lykes Bros. Steamship Co. Inc., as a second electrician aboard the SS NANCY LYKES on December 10, 1971.

(2) On December 10, 1971 the plaintiff suffered injuries in the fall of the engine room elevator aboard the SS NANCY LYKES.

(3) The plaintiff claimed that he sustained extensive and serious physical and mental injuries.

(4) The plaintiff on February 3, 1972 commenced an action under the Jones Act and the General Maritime Law against his former employer, Lykes Bros. Steamship Co. Inc., defendant, to recover the total sum of $900,000 in damages as a consequence of the injuries sustained by him in the elevator fall of December 10, 1971.

(5) Defendant and third-party plaintiff, Lykes Bros. Steamship Co. Inc. caused a third-party summons and complaint to be filed and served on Todd Shipyards Corporation, third-party defendant, wherein the third-party plaintiff seeks indemnification, including reasonable costs and counsel fees from the third-party defendant, on the premise that if the NANCY LYKES was unseaworthy as alleged in the plaintiff's complaint or the defendant negligent, then and in that event third-party plaintiff is entitled to be indemnified from Todd Shipyards Corporation, third-party defendant, by reason of the latter's breach of warranty of workmanlike performance.

(6) The case of the plaintiff as against Lykes Bros. Steamship Co. Inc. was compromised for the sum of $325,000.

(7) The third-party defendant, Todd Shipyards Corporation, approved the reasonableness of the amount of the settlement of the plaintiff's case as against the defendant, Lykes.

(8) Judgment in favor of the plaintiff as against the defendant for the sum of $325,000 was duly entered.

(9) The judgment in plaintiff's favor as against the defendant in the sum of $325,000 has been satisfied and paid by the defendant and third-party plaintiff, Lykes Bros. Steamship Co. Inc.

(10) The NANCY LYKES was at the Todd Shipyards in Galveston, Texas from approximately June 2, 1971 until December 7, 1971 undergoing elongation and repairs.

(11) The elongation process was completed on October 15 but possession of the vessel was not taken by Lykes until December because of a longshoremen's strike. Lykes' crew first went aboard on December 2nd and work was done in the engine room by Todd through December 6, 1971.

(12) The NANCY LYKES was in Houston December 7 and returned to Galveston on December 11. She left Galveston finally on December 12, 1971.

(13) The access plates which had been opened in the engine room spaces during elongation work had been completely closed by October 15, 1971.

(14) The NANCY LYKES does not have a skylight in her engine room. However, Todd used the engine room lift shaft to fleet certain materials into and out of the engine room during the period December 3 through December 5 while the NANCY LYKES was at the Todd yard. (This stipulation is made without limitation to Lykes' contention that the engine room shaft also was used by Todd during the entire period that the NANCY LYKES was at the Todd Yard).

(15) Lykes had requested Todd not to use the platform. It was left at the bottom of the shaft and was not used by Todd.

(16) Todd performed no actual work in connection with the maintenance, etc. on any part or portion of the engine platform lift.

(17) Since it is stipulated that defendant will offer no factual witnesses Lykes stipulates that there is no eye witness proof that any of the materials moved by Todd through the shaft contacted or damaged the cables.

3(b) The contentions of the third-party plaintiff, Lykes Bros. Steamship Co. Inc., are as follows:-

(1) On December 10, 1971 the plaintiff, LEONARD IMANUEL, Second Electrician aboard the SS NANCY LYKES, was injured in the performance of his duties. In the course of his work, the plaintiff was standing on the platform of the engine room elevator when suddenly two (2) cables supporting the elevator parted. The elevator plummeted downward approximately sixty (60) feet and Imanuel sustained the serious injuries which formed the subject matter of his action to recover damages against his employer, Lykes Bros. Steamship Co. Inc.

The third-party defendant, Todd Shipyards Corporation, immediately prior to the happening of the accident, had carried out and performed extensive reconstruction, repair and maintenance work aboard the SS NANCY LYKES. The third-party defendant, Todd Shipyards Corporation, among other things, effected repairs within the engine room of the vessel, and in so doing, moved heavy engine parts and objects into and out of the engine room of the vessel using a shore crane with hook and falls. The third-party plaintiff contends that while so moving heavy objects in and out of the engine room, via the elevator shaft, such parts and objects struck

and damaged the supporting cables of the engine room elevator precipitating their ultimate failure and causing directly the accident to the plaintiff. It is a contention of the third-party plaintiff, Lykes Bros. Steamship Co. Inc. that whereas the parting of the cables of the engine room elevator apparently rendered the SS NANCY LYKES unseaworthy and thus creating a liability of the shipowner to the plaintiff for his damages, then and in that event the third-party plaintiff is entitled to indemnify from the third-party defendant such indemnity to include the full amount of settlement paid to the plaintiff, i.e., $325,000, those reasonable costs and counsel fees incurred by the third-party plaintiff in the defense of the action brought by the plaintiff against Lykes Bros. Steamship Co. Inc. and the sum of $8,048 paid in maintenance by Lykes to the plaintiff.

The third-party plaintiff claims that the third-party defendant breached its warranty of workmanlike performance in the negligent, careless and substandard manner in which it carried out its reconstruction, repair and maintenance work aboard the SS NANCY LYKES and, more particularly, the affirmatively negligent manner in which Todd Shipyards Corporation, by its agents, servants and/or employees moved heavy objects and machine parts into and out of the engine room of the SS NANCY LYKES via the elevator shaft

3(c)

THIRD-PARTY DEFENDANT, TODD'S CONTENTIONS:

1. Lykes settled the case wilfully without sufficient or reasonable investigation and as such should be precluded from inserting any claim for indemnity against Todd.

2. Lykes' claim that misconduct of Todd sometime between June and mid-December of 1971 resulted in the platform cable severing, is factually impossible and Lykes has not established sufficient basis from which this court may draw any inferences.

3. Lykes acted improperly in, among other things, failing to properly maintain the platform lift and its appurtenances among other things, the fail-safe brake. The crew of the NANCY LYKES, specifically disobeyed prohibition to stay off the platform lift, failed to carry out a manufacturer's prescribed maintenance procedure and carried out their inspection of the limit switches in an unreasonable fashion and contrary to the manufacturer's suggestions. All of the facts show that the cables were severed at the time of the accident due to the method of which the electricians were then using the platform.

4. The conduct of Lykes is such as to preclude its right to indemnity. Todd is entitled to an award of costs and expenses including its reasonable attorney's fees.

E. P. CIV. 218 OPIN 564

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LEONARD IMANUEL,

Plaintiff,

-against-

LYKES BROS. STEAMSHIP CO., INC., 72 Civ. 498 (E.L.P.)

Defendant and Third-Party Plaintiff,

-against-

TODD SHIPYARDS CORPORATION,

Third-Party Defendant

----------x

A P P E A R A N C E S

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THOMAS H. HEALEY, ESQ.
Of Counsel

PALMIERI, J.

This is a claim for indemnity arising out of a personal injury action brought by a seaman, Leonard Imanuel, under the Jones Act, 46 U.S.C. Sec.688, against his employer, Lykes Bros. Steamship Co., Inc. (Lykes). Lykes, a shipowner, has impleaded Todd Shipyards Corporation, a repair yard (Todd or Todd Shipyards), as a third-party defendant. Imanuel's underlying claim was settled before trial by the payment of $325,000.00 by Lykes Brothers. Asserting that Todd Shipyards was solely liable for the injuries, Lykes is seeking indemnity from Todd for the amount of the settlement on the ground that Todd breached its warranty to perform certain ship repairs in a careful and workmanlike manner. There is no issue before this Court regarding the amount of the settlement. The sole issue is whether Lykes has sustained its claim for indemnity against Todd.

The S.S. NANCY LYKES, the vessel on which the accident occurred, had been extensively altered and repaired by Todd over a period of months (between June and October 1971) before the occurrence of the accident. However, the events relevant to the accident took place substantially within a short period of time prior to its occurrence on December 10, 1971. The ship was tied to a

pier at Houston, Texas, at that time. The plaintiff seaman was one of the crewmen who had joined the ship only a few days before in preparation for its return to service.

The elevator platform and its related equipment were maintained and controlled by Lykes. On the day of the accident and for a number of days before, it was used by the ship's crew. No claim is made by Lykes that Todd's conversion and repair work in any way included work on the elevator platform. Lykes' claim for indemnity against Todd rests upon a factually circumscribed claim that Todd in performing certain work in the engine room early in December, 1971, and in moving machinery through the elevator shaft by an overhead crane, struck the cables and damaged them. There were no eyewitnesses to any such occurrence, Lykes' claim resting entirely on circumstantial evidence.

At the time of the accident, the plaintiff Imanuel was working with his immediate supervisor, Chief Electrician Haag, on the engine room elevator platform. The work had progressed for several hours before the accident. Imanuel and Haag were checking its operational condition and, in the process, disconnected practically every electrical safety device of the quipment. Neither

Imanuel nor Haag was an elevator mechanic. They were electricians. Both men were standing on the elevator platform checking a switch when Haag decided to leave to fetch a meter for further tests. The platform had been raised to its uppermost limits at the main deck. Just as Haag stepped off the lift platform and onto the main deck, Imanuel heard a loud grinding noise and the lift began a free fall down the shaft with Imanuel aboard. He was severely injured, having fallen about the equivalent if four stories, or about 60 feet. The immediate cause of the fall, or perhaps its result, was the substantially contemporaneous parting of the sustaining cables. They were severed, as though with a knife, by an impact occurring at the time of the accident. They were cut at about the same distance from the anchored ends. The fall of the platform might have been prevented if the broken rope safety device under the platform intended for just such a calamity, had been operable. But it had never been maintained by Lykes and it is reasonable to infer that it was permitted to become useless. In any event, the evidence is quite clear that the cables were in satisfactory condition prior to the accident. They did not part because of any inherent defect or because of any lack of tensile strength.

In short, Lykes has failed to prove any actionable fault by Todd. The findings of fact and conclusions of law which follow are intended to substantiate and to amplify what has already been said, and to demonstrate that Lykes has not sustained its claim of indemnity against Todd Shipyards.

FINDINGS OF FACT

1. The plaintiff, Leonard Imanuel, was employed by Lykes Bros. Steamship Co. Inc., (Lykes) as a member of the crew and as a second electricial aboard the SS NANCY LYKES, a cargo vessel of about ten thousand gross tons.

2. Lykes is a corporation organized and existing by virtue of the laws of the State of Louisiana, with its principal place of business in New Orleans, Louisiana. It was at all relevant times the owner of the S,S. NANCY LYKES.

3. Todd Shipyards is a corporation organized and existing by virtue of the laws of the State of New York with its principal place of business in the Borough of Manhattan, City and State of New York.

4. On December 10, 1971, while working as a crewman in the employ of Lykes, the plaintiff was seriously injured when the engine room lift, an electrically operated platform type elevator used for the movement of stores and on which he was working, fell to the bottom of the elevator shaft.

5. On February 3, 1972, plaintiff commenced this action under the Jones Act and the General Maritime Law against Lykes to recover damages as a consequence of the injuries sustained by him in the accident hereinabove described.

6. On November 1, 1972, Lykes commenced a third-party action against Todd Shipyards Corporation (Todd or Todd Shipyards) under the General Maritime Law claiming indemnity for any recovery by plaintiff against Lykes on the ground that any liability of Lykes to plaintiff would have been brought about by the failure of Todd Shipyards to perform repair work undertaken by it on the S.S. NANCY LYKES in a safe and workmanlike manner.

7. Plaintiff's case against Lykes was settled and discontinued for the sum of $325,000.00, which was paid by Lykes. A judgment was entered for this amount against Lykes on November 29 1974, and plaintiff's satisfaction of judgment was entered on December 17, 1974.

8. No issue is presented in this third-party action with respect to the settlement of the seaman's action. Todd has conceded the reasonableness of the amount of settlement.

9. From about December 3 to about December 6, 1971, Todd Shipyards moved certain materials into and out of the engine room of the S.S. NANCY LYKES while it was moored at a

Todd shipyard dock. It used the shaft of the engine room lift for this purpose by means of an overhead shore crane with hook and falls. Todd did not use the engine room lift at any time. The lift platform remained at the bottom of the shaft throughout the Todd work in the engine room. Lykes had requested Todd not to use the platform.

10. None of Todd's work had any relation to the repair or maintenance of the engine room platform lift.

11. There is no eyewitness proof that any of the materials moved by Todd through the shaft touched or damaged the cables.

12. There is no persuasive evidence that Todd used the shaft in question during the repair and reconversion work between June and October, 1971. During this period access plates were opened or cut through the bulkhead and used as means of access to the engine room. These access openings were closed before October 15th, 1971.

13. Todd performed new work of a limited nature in the engine room, at Lykes' request, early in December 1971. Since there was no time to reopen the access plates and Lykes had forbidden the use of the lift platform itself and had deactivated it, Lykes was chargeable with notice of the likelihood that Todd would use the elevator shaft to move materials in and out of the engine room.

Such use of the elevator shaft was customary and proper on this class of ship.

14. Although Todd moved machinery and repair items into and out of the engine room of the S.S.NANCY LYKES, about December 4th and 5th, 1971, using the elevator shaft as a means of ingress and egress, there is no persuasive evidence that the supporting cables of the engine room platform lift were struck or damaged in the course of this work.

15. In order to effect the movement of machinery and repair items just described, a stationary gantry crane was spotted so that the head was plumb over the opening of the shaft. The runner descending from the gantry was joined at the end to a load block. Beneath this was the cargo hook. The load block never entered the shaft. From the hook, slings of propwr length were affixed to stretch from the shaft opening to whatever level of the engine room materials were to be moved. With the gantry in plumb position, vertically above the opening, it is reasonable to infer that the lifting or lowering of machinery and repair items was done in a straight up and down fashion. The heaviest object lowered through the shaft by Todd was a manifold weighing about 300 pounds. There is no evidence from which any inferences can be drawn that the manifold or any other objects moved through the shaft by

Todd's crane dented the wall of the shaft, touched the cables or interfered in any way with the platform lift equipment; or that any wind or weather conditions had any effect.

Signal men to insure a reasonable lift were placed at the main deck opening and within the engine room to serve as eyes for the crane operator. In addition, when the nature of the lift warranted, a line was fixed to the end of the material to insure a steady lift.

16. Lykes admits that there is no eyewitness proof that this method failed or caused contact between materials and the cables.

17. The sustaining cables of the platform lift were severed at the time of the accident to the plaintiff seaman.

18. Immediately before the accident the lift was at the uppermost limits at the top of the shaft. The testimony of plaintiff Imanuel and Chief Electrician Haag that the lift platform was about two feet below the upper limit switch just before the accident is rejected by the Court as inaccurate and inconsistent with the credible evidence.

19. Imanuel heard a loud noise just before the platform fell. He was then standing on the platform and Chief Electrician Haag, about to leave the lift, had one foot on the platform and the other on the main deck. If the lift

platform had been two feet beneath that switch, as Haag and Imanuel recalled years later, it would have been impossible for Haag to have been straddling the deck and lift or to step off the platform onto the deck since the switch was yet another two feet below the deck.

20. On or about December 1, 1971, and continuing to December 10, 1971, Lykes was assembling its crew and outfitting the S.S. NANCY LYKES in preparation for its return to service. It appears likely that her full crew was aboard by December 10, 1971.

21. Chief Electrician Haag and Leonard Imanuel admitted that they had operated the lift for several hours before the accident on December 10th while checking the controls and limit switches. Haag considered it likely that other crew members, particularly engine room personnel, had been using the lift shortly before December 10th.

22. The elevator shaft was carefully inspected by Lykes; marine surveyor, Noel Thompson, and by John Peuler, Lykes' claim manager. They could provide no evidence that Todd had caused any material to touch the cables.

23. During the course of his testimony, Mr. Thompson "suggested the possibility" that during Todd's conversion work (during the June-October 1971 period) "materials had been removed from the vessel through the elevator shaft and

that the cables had been damaged at that time, resulting in final failure on December 10, 1971." This testimony is rejected by the Court as based upon conjecture and inconsistent with the relevant circumstances as derived from the credible proof. Mr. Thompson appeared in court and testified as follows:

> "THE COURT: You see, if you are playing detective and speculating yourself into a conclusion, that is one thing. If on the other hand you are basing your conclusion upon objective facts which can be understood and evaluated, that is another thing. And it is very important for me to know what this suggestion is based upon, and I want you to tell us fully every ground that you have for making this suggestion.
>
> "THE WITNESS: The main one being that the two cables parted at exactly the same position, which I think is most unusual, and which to me gave thought to something, regardless of when it was, must have struck those cables in some position.
>
> "THE COURT: Well, aren't you saying in effect that you can't explain the break of those cables, and so you are trying to find some explanation for it other than what you were able to observe "
>
> "THE WITNESS: That is correct, sir."

24. Another marine surveyor employed by Lykes, Russell Brierly, described the break in the cables as "straight across, as though the cable had been cut," observed that "the guard to prevent the cable jumping out of the shave was bent up on both ends instead of following the curve of the sheave;" and that "the external visual

appearance of the cable, drum, motor and sheave * * * appeared in satisfactory condition." He recommended that the platform car sheaves be examined "to determine if these sheaves could possibly have cut the cables." His testimony supported Todd's contentions that the cables of the platform lift were in satisfactory condition prior to the accident, and that the break in the cables occurred at the time of the accident.

25. The bulk of the testimony of Roger Kiste, a testing laboratory metallurgist, who was called by Lykes as an expert witness, is rejected by the Court as unpersuasive. The cables upon which his testimony rested had been cut up by a machine so that he eventually and after considerable handling and transportion received 16 sections of it for examination. These sections were left in a wooden crate in a warehouse for some time after they had been cut up and were later shipped by air freight from New Orleans to the testing laboratory in Pittsburgh where they were examined. He could not state at what particular time the damage by impact which he found had occurred. Nor were his measurements made with any great degree of care. The cutting of the cable for study appears to have been done in a machine shop in New Orleans with the wrong type of machinery.

26. To the extent that Kiste's testimony can be

construed as a finding that the cable showed kinking and flattening other than at the area of severance it was inconsistent with the testimony of three witnesses, Thompson, Brierly and Haag, who inspected the cable immediately after the accident. The cable pieces were moved about in a crate over a long period of time thereafter and Kiste was unable to identify with precision the sections of cable represented by the identification tags.

27. Kiste's finding of a minimum breaking strength of 5200 pounds per cable is accepted. Since the elevator platform was suspended in such a manner that its weight was sustained by the equivalent of four cables, it had a minimum lift strength of 20,800 pounds.

28. The platform lift, with the two crewmen on it, did not even approach a deadweight sufficient to part the cable. This would be so even if 25% of the cable were damaged, as Lykes appears to contend.

29. The testimony of Joseph DiCocco demonstrated a thorough familiarity with the platform lift in question. He was a trained elevator mechanic employed for many years by Energy Elevator Company, manufacturer of the lift in question and had done construction, maintenance, service and repair work on elevator, dumbwaiters and escalators. He had participated in the installation of the very platform

lift in question on the S.S. NANCY LYKES and was familiar with the maintenance manual issued by his employer for the purchasers of this equipment. His testimony is accepted as entirely credible.

30. The underside of the car platform was equipped with a mechanical safety device called a broken rope safety, consisting of a spring-fed lever which, if not held in place by tense cables would be activated by causing eccentric cogs to engage the rail thereby stopping the lift and loking its position and preventing any free fall of the platform.

31. The broken rope safety device had no outer covering. It required lubrication . It had to be kept free of rust, dirt and incrustation to insure its proper functioning. Lubrication could be accomplished only by a special alemite grease gun which could engage all the fittings and which was furnished with the platform lift or obtainable from the manufacturer. There is no evidence that Lykes ever possessed or used such a grease gun. When questioned about the broken rope safety device, Haag, who was charged with maintenance of the lift, admitted that he did not know the safety device existed. There is no evidence that elevator mechanics were ever employed by Lykes for the care and maintenance of the lift. The broken rope safety was incrusted with rust and dirt at the time of the accident. Lykes' failure to maintain

this safety device was in direct violation of a Coast Guard regulation, 46 C.F.R. Sec.110.10-1(g), which incorporates by reference the American National Standard Safety Code for Elevators, Dumbwaiters and Escalators, Sec.1002.1f.

32. A lack of lubrication could have prevented rotation of the sheaves beneath the platform.

33. Each of the guide rails on which the platform rides, located on opposite sides of the shaft, has a place for a bolt to be inserted through it near its top, forming a T configuration. The purpose of these bolts is to stop the platform in the event the limit switch is overrun at the uppermost point of movement. Neither of these bolts was in place at the time of the accident. Lykes has made a post-trial suggestion that the bolts were removed only after the accident in order to permit removal of the platform from the shaft for photographing purposes, but the record does not sustain this contention.

34. It appears probable from the testimony of DiCocco that without the restraining bolts at the top of the rails, and with the platform operated to its uppermost limits, the cables under the platform could have become disengaged from their sheave grooves, thereby coming into contact with the machined edge of the sheave and creating a danger of cable cutting. This danger is increased if

the sheave is restricted in free movement or actually seized. It is reasonable to infer that there was no lubrication or maintenance over a long period of time of the entire undercarriage of the platform including the broken rope safety device and the sheaves under the platform. It is also reasonable to infer that the cables may have been cut at the time of the accident because of the situation just described resulting in the broken rope safety device being inoperable and in the undercarriage sheaves being stuck fast.

35. When the plaintiff Imanuel and Chief Electrician Haag were checking the platform controls prior to the accident they did so in such a way as to by-pass the electrical circuitry controlling the limit switches as well as other safety features built into the equipment to control the movement of the platform when the electrical motor is operating. These features included: door interlocks, limit switches and a slack cable switch.

36. By closing the relays with a screwdriver, as Imanuel and Haag were doing prior to the accident, they by-passed all the safety devices which operated from the same circuit; thus allowing the lift to function without control and thereby creating a risk of reverse spooling and of contact between cable and cutting edges (e.g., 3 sheaves, sheave guard, machined opening in the bulkhead wall).

37. In operating the car with no safety or automatic features in circuit, Imanuel and Haag acted with utter disregard of their own safety. Todd contends that they caused a reverse winding of the cable on the drum by this procedure ultimately causing the cable to be cut by the sharp machine edge of the bulkhead after operating the lift to its extreme height. This contention has some support in the evidence, but this Court is not persuaded that an explicit finding to this effect can be substantiated or is necessary to support its conclusions.

38. There is yet another plausible theory. The cables that raised and lowered the platform were secured to the drum, which wound the cable in and out and stored the extra cable. The drum was located approximately 10 feet below the top of the shaft. The cables played out from the lower side of the drum, went up and over a sheave fixed at the top of the same side of the shaft, then went back down under the platform, passing under a sheave at both sides of it. The cables then ran back up the opposite side of the shaft and were anchored near its top. As the platform was raised near the top of the shaft, the sheaves beneath it would eventually approach the level of the wall sheave. The cable, running from the drum to the wall sheave, would

then begin to assume a horizontal path on leaving the wall sheave, rather than going straight back down as when the platform was lower in the shaft. If the platform went high enough, the cables would work their way off the wall sheave. Once off the wall sheave, the cables would no longer support the platform. They would be held up on one side of the shaft by the anchor and on the other only by the fact that they were wrapped around the drum far below the wall sheave. Consequently, the cables and the platform would fall. As the platform fell with the slack cables beneath it, the cables would eventually become taut somewhere below the drum. In this position they would run from <u>beneath</u> the drum, out and <u>down</u> over the machined edge of the bulkhead, beneath the platform and then back up to the anchor. It is plausible that the falling weight of the platform with Imanuel on it could have snapped the cables against this bottom machined edge of the bulkhead with enough force to sever them cleanly and evenly without halting the free fall of that weight. If this theory is correct, the accident was caused by raising the platform too high beyond the disconnected safety devices, and the cables' rupture was a result rather than a cause of the accident. The Court does not find that this or any of the theories advanced is the final explanation of what happened. Rather the Court

relies for its decision on the fact that Lykes has completely failed to prove that Todd's activities were causally related in any respect to the accident.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the parties and of the subject matter of this litigation.

2. Lykes has failed to sustain its burden of proof that Todd caused damage to the cables of the engine room lift platform of the S.S. NANCY LYKES with resulted in their parting on December 10, 1971.

3. Lykes was negligent in the care, maintenance and operation of the engineer's lift platform. This negligence was the cause of the accident on December 10, 1971.

4. The operation of the engineer's lift platform by plaintiff Imanuel and Chief Electrician Haag prior to the accident on December 10, 1971, was grossly negligent and in utter disregard of their own safety. They were both unfit to perform the duties in which they were engaged since they had no training or experience as elevator mechanics and were employed solely as electricians.

5. Todd was not negligent in any respect nor did it breach its warranty of workmanlike service.

6. Todd is entitled to final judgment dismissing Lykes' claim for indemnity with costs and disbursements.

Todd has requested an award of attorney's fees. However, Todd cannot claim a right to these fees. See Calderone v. Naviera Vacuba S/A, 328 F.2d 578 (2d Cir.1964) Assuming without deciding that the Court could grant Todd an award of attorney's fees, compare United States v. S/S Wabash, 331 F. Supp. 148 (S.D.N.Y. 1971) with Ring v. Motor Vessel Cape Clear, 226 F. Supp. 709 (N.D. Cal. 1964), the Court declines to award such fees to Todd because during the early pretrial discovery procedures Todd mistakenly led Lykes to believe that it had not used the elevator shaft; whereas in the later development of pretrial discovery Todd was constrained to admit its use of the shaft in December 1971. While the Court does not impugn the good faith of Todd, this unhappy volte-face on Todd's part created understandable suspicion on the part of Lykes and probably created needless expense and inconvenience for Lykes. Under the circumstances an award of attorney's fees to Todd would be unjustified.

Submit proposed judgment on notice consonant herewith.

(signed)EDMUND L. PALMIERI
EDMUND L. PALMIERI
U. S. D. J.

Dated: New York, N.Y.
April 23, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

LEONARD IMANUEL,

Plaintiff,

-against-

LYKES BROS. STEAMSHIP CO., INC., 72 Civil 498 (ELP)

Defendant and Third-Party Plaintiff,

JUDGMENT

-against-

TODD SHIPYARDS CORPORATION,

Third-Party Defendant

----------x

This action having come on for trial before the court, Honorable Edmund L. Palmieri, District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered; it is

ORDERED AND ADJUDGED, that the defendant and third-party plaintiff, Lykes Bros. Steamship Co., Inc.'s claim against the third-party defendant, Todd Shipyards Corporation, is hereby dismissed and judgment is hereby entered in favor of the third-party defendant, Todd Shipyards Corporation, together with costs to be taxed, with

the exception that the cost of the plastic model of the S.S. NANCY LYKES' engine room elevator, entered as an exhibit by the third-party defendant, shall not be taxed.*

No other costs shall be allowed any party.

Dated: New York, N.Y.
May 12, 1976

EDMUND L. PALMEIRI

U. S. D. J.

* Although this exhibit was useful it was not necessary for the case of Todd and it was not requested by the Court.

JUDGMENT ENTERED 5/12/76

Raymond F. Burghardt
Clerk

Q Could you tell us approximately, tell the

EXCERPTS FROM THE TESTIMONY OF LEONARD IMANUEL, A WITNESS FOR THE DEFENDANT AND THIRD PARTY PLAINTIFF.

2

Q Mr. Imanuel, what is your occupation ?

A Electrician, second electrician.

Q How long have you been at that occupation ?

A Since 1968.

* * *

7

Q When did you obtain your electrician's endorsement from the Coast Guard ?

A 1968.

Q To get that endorsement, did you have to take a test ?

A Correct, by the Coast Guard.

Q Was that a written test ?

A Yes, multiple choice questions.

* * *

9

Q Did you then go to work as an electrician aboard ship ?

A Approximately right after a month my first ship was the CONSTITUTION.

A They would be -- as I was standing on just

Q The CONSTITUTION of American Export Line ?

A Yes, sir.

Q How long did you work on the CONSTITUTION ?

A Almost two years.

Q What was your rating ?

A Second electrician.

* * *

11

Q After that second Export ship then what ?

A Then when I came back, then I caught the NANCY LYKES to New York.

Q When was that ?

A January 15th, 1970, exactly.

Q What rating did you sign on ?

A Second electrician.

Q How long did you stay on that ship ?

A I stayed on the ship until December, the 10th, till I got hurt.

Q You just got off during the time she went in for conversion ?

A Yes.

Q Who was the other electrician on the ship ?

A Herman Haag.

Q Haag ?

A Herman Haag, yes.

* * *

13

Q Amongst your duties did you have any in respect to the engineer's hoist, the engineer's lift, the elevator we were talking about; did you have any duties in respect to that ?

A Yes, we usually work on it every ten day, most likely, we grease the cable and the shaft. I did that myself. It was my duty, including the winches on deck.

* * *

20

Q Did you on any occasion ride the elevator ?

A The only reason we was in the elevator, I was told to get in the elevator to check the door interlock, and to check the door interlock one must be in the elevator. It is impossible to check it other than that.

Q You say that to check the door interlock, you mean the limit switch or the door interlock ?

A No, the door interlock.

Q Tell us what a door interlock is.

A As the elevator reach the floor, the door opens and close, the door interlock, it is a safety.

If it is not working, the elevator won't run, and we check it to see if it goes in and out and the breaks are made.

Q How often did you have occasion to ride the elevator, how frequently, to check the door interlock ?

A Well, we never suspected any problem with the door interlock until this thing came up.

21

Q Had you on some prior occasion before this accident ridden the elevator to check the door interlock ?

A We checked this elevator prio to the ship went to the yard, and I greased the elevator myself, because this was my duty to do that.

Q On that occasion did you ride the elevator ?

A No, sir.

Q Is it a fact that you only rode the elevator if there was some trouble with the door interlock ?

A Correct, we suspected that the door interlock might be something wrong with it, this is why we went to check it.

Q Would that be the same for the limit switch ?

A Yes, it is also a safety, yes, sir.

Q You said you had to ride the elevator to check these. Why did you have to ride the elevator ?

A Becsuse otherwise you cannot s e if the door is closing right. You have to be inside the elevator to see it. As it reached the level, it stops, it goes in, and you check it yourself, open the door in and out to check it. And while I was doing that, Mr. Haag, he was pushing the relays in the control room, and as I reached the level, I holler, and I bang one time for him, with a little hammer, and he let the relay go.

* * *

22

Q How about checking the limit switches, would there be any way to check them without getting in the elevator ?

A Well, the top limit switches, no. You have to be also in the elevator because the way it is situated up against the bulkhead, you cannot reach it from the main deck. You cannot do it.

23

Q Is it possible that you could have rigged a bosun's chair and lowered yourself into the shaft ?

A Perhaps, but that would be a lot of work involved to do that, but that can be done, yes, a bosun's chair can be rigged up.

Q Would that be easier or harder ?

A I wouldn't say that, no.

Q You wouldn't say what ?

A That it would be easier to rig a bosun's chair, no.

Q You say it would not be easier ?

A No. It is not practical for them to do it, because you can check it while you are in the elevator.

Q Now, go back to the latter part of the last voyage, just before the vessel was going in the yard, you were aboard and working as an electrician ?

A Yes, sir.

Q I think you mentioned that you had had a normal inspection of the elevator about once every week or ten days.

A Or ten days.

Q Ten days ?

A Yes.

Q Did you make any inspection in connection with the vessel going into the yard ?

24

A Yes, we have.

Q What was the nature of that inspection ?

A We checked all the electrical equipment on the main deck and also I greased the cables, the elevator, prior to the ship went to the yard.

* * *

before this accident happened ?

25

Q When you were greasing the cables on the main deck, you also greased the cables on the elevator, is that right ?

A Yes, and the winches also.

* * *

27 Q So I take it then you greased part of the cable while you were standing in the elevator ?

A Yes.

Q And part while you were in the elevator room ?

A Correct.

* * *

29 Q You recall that this last time when you checked all the winches on the deck you specifically greased all this cable also ?

A Yes.

Q The entire cable ?

A Yes.

Q And did you follow that procedure, going in the elevator for part of it and doing the rest of it from the room ?

A This is how it has to be done to get it.

29 Q You did this by holding your hand around the cable ?

A Yes, you hold your hand, but you have to be very careful, with a pair of gloves and like the oil runs on it.

* * *

34 Q From whom did you get your orders as to what to do ?

A From Herman.

Q What if anything did Herman tell you you were supposed to do ?

A I don't quite remember specifically what we were doing, but I remember when the Chief Engineer came, and he told Herman, say, look at Herman and say, "Fellows, I want you to put the elevator back in operation for me."

Excuse me. What I remember, sir, we went to work on the elevator.

* * *

35 Q Well, I believe you said that he said "Fellows, I want you to put the elevator back in operation."

A "In operation for me."

* * *

Q Do you operate the elevator by pushing a button some place ?

A No, you could control it from the control room also.

Q Tell me, where can this elevator be run from, what positions ?

A You could, from both positions up and down, from the control room you can do it.

Q Can you run it from the lower level of the engine room for example, can you run the elevator ?

A Yes, if you push the button.

Q Can you run it from the next level, the operating platform ?

A Correct.

Q And the 'tween deck, could you run it from there ?

A Yes.

Q If you push the button, will the elevator go up and down from the buttons there ?

A Yes.

Q Is that how it is normally operated ?

A Correct, sir.

* * *

40

A No. After we put the coil, still the elevator wouldn't move. So I told Herman that about the interlocks, because it is a safety, if it is not closing correct the elevator won't move. So we decide to check on that, sir.

Q Your plan was to put the elevator back in operation ?

A Correct, Sir.

Q What did you plan to do during the rest of the day; what were you going to do ?

A Well, first of all if we did find the trouble right away, by the ship being idle for so long, I would have start greasing the cables, you know, and the shaft.

Q You mean greasing like you did before ?

A Correct, because the ship was idle for quite a while down there.

Q And would you have ridden in the elevator to grease it ?

A Like normal, like I always do it, yes, the same procedure.

Q And you would have greased some of it from the room up there ?

A Yes, sir, like I always did.

Q Then after lunch, what did you do ?

41

A We went direct to the control room. We put the coil back, and after we finish, and still wont' run.

Q Then what ?

A This is when I went in the elevator, while Herman was pushing the relay. As the elevator reach the level, I holler for Herman, and I had a little hammer, a bank, so he let go the relay.

Q You said the elevator wouldn't run, but you must have got it running to get up ?

A He did it through the control room, in the control panel he did it.

Q In other words, he was operating the elevator ?

A Correct.

Q And you were in the elevator ?

A In the elevator.

Q When did you get in the elevator ?

A On one of the bottom floors, sir.

Q Then you came up the shaft ?

A I came up, yes.

Q What did you do while you were in the elevator ?

A Excuse me. It must have been one of the top floors, the top floor, it was on top, so I went in and I checked all the doors.

Q Then you had moved the elevator some time ?

42

A Yes.

Q During that working that you were doing ?

A Yes.

Q What did you do when you were in the elevator ?

A As soon as the elevator reach the door level, I holler for Herman, he stopped it and I check the door, it goes in and out, everything look fine to me.

Q Which door level are you talking about ?

A All the levels.

Q All the levels ?

A Yes, sir.

Q So you did check some of the lower levels ?

A All the way up, yes.

Q You say he stopped the elevator ?

A Yes.

Q Where did he stop the elevator each time ?

A Any time right at the level, from the lower floor, because I watch it very carefully. It is a very slow procedure. As soon I holler he let go and the

elevator stop right away.

Q Did you stop a little below each floor ?

A At a level, yes.

Q Did you check the door interlock ?

A Yes.

43

Q Did they check out all right then ?

A Yes, they looked all right.

Q You worked up the shaft ?

A Yes.

Q And you got up to the top ?

A Yes, sir.

Q At that time was the cover open ?

A Yes, it was open, yes.

Q The cover was open on the deck ?

A Yes.

Q Try to remember very carefully what happened as you came up to the top.

A. Herman came up, and I told Herman, I say, "Herman, I cannot see anything wrong with the door interlock, but why don't you double check?"

Q You are going ahead of me again, Mr. Imanuel. As you were coming up the shaft, would you tell the Court what happened, I mean what were you doing ? You started to tell me before that you called to Herman.

Tell us about that again.

A Yes. Oh, I was watching carefully at the level, so I stop the elevator about maybe two feet below the level, I holler to Herman so he let go because --

Q Do I gather you wanted the elevator platform

44 to be below the level ?

A Below, to check the limit switches.

Q Where would the platform normally stop at the upper level ?

A At the level.

Q Even with it ?

A Even level, yes.

Q In other words, this would be at the top of the weather deck ?

A Not all the way on the top. It is the level there on it.

Q About the deck level ?

A Yes.

Q Mr. Immanuel, I show you Lykes Exhibit 1 and Lykes Exhibit 3m which I think I may have showed you before.

A Yes.

44

Q Could you tell us approximately, tell the Court how far up the elevator would normally stop. Approximately.

A It will stop, if you have a piece of equipment, you could actually reach from the main deck and pick it out.

THE COURT: Didn't the prior witness say that

45 the elevator would go to the height of the rim here ?

THE WITNESS: Yes.

THE COURT: I think that's been made clear.

Q On this occasion where you were coming up, where did you stop the elevator ?

A Way below, about two feet.

Q Would you show us ?

A I would say around here, like. I wouldn't dare let it come up.

THE COURT: About two feet below this rim ?

THE WITNESS: I would say yes.

Q On this diagram, on this photo rather, are these the limit switches ?

A Yes, sir.

THE COURT: That is Exhibit what ?

MR. DOTI : Exhibit 3, your Honor.

Q Let me interrupt you. I want to know what

Q Would they be on the opposite side over here ?

A They would be -- as I was standing -- just a minute, I was standing like this here. I remember specifically it was on my right hand side, looking at it. Yes, it is like that, say on my right hand side.

46

Q Are these the limit switches that you were going to work on ?

A Yes, sir.

Q Did you have sides on the elevator, the protective sides ?

A Yes.

Q Where were those sides in respect to the shaft, which sides were they ?

A You had all the three sides, except the one where you would come to the engine room where the door open up.

Q Was that also the part where the limit switches were ?

A On the side of it.

Q You could reach the limit switches ?

A Yes, you could reach.

Q When the elevator stopped, tell us again how you stopped it.

A I keep watching the elevator coming up, so I could see the level here, and the minute it reaches a height like two feet, I holler for Herman, bang the hammer, Herman let go the relay so it stop right there, and Herman came up.

Q Did Herman stop the elevator where you wanted

47 it stopped ?

A Yes.

Q Where was that ?

A About two feet below the level.

Q Two foot below the usual level ?

A I would say two feet.

Q How was he operating this, was he some way or other by-passing the buttons ?

A More or less I would say, yes, with two relays, yes.

Q With that could he make the elevator go up or down ?

A Correct, sir.

Q Did it run at its normal speed ?

A No, not at a normal speed. This is another thing you have to be very careful, it is a slow procedure, and one has to be very careful because it is very dangerous.

Q In other words, you run it slower than usual ?

A Yes.

Q Why is it very dangerous ?

A Because by holding the relay end, if the limit switches on top is not working and the elevator pass the level, that might be a little dangerous, I don t know

48 what might happen then.

Q So that is why he was going very slowly ?

A Yes.

Q Slower than usual ?

A Yes, sir.

Q As it was coming up the shaft, did you notice anything unusual in the way it was coming up except that it was slower than usual ?

A Nothing whatsoever, sir.

Q Did you hear anything unusual ?

A None whatsoever, sir.

Q Was it shaking in any way ?

A No, sir.

Q Was there anything else on the elevator platform with you ?

A No, sir.

Q Did you have any tools ?

A Only a hammer, and my tools in my back pocket.

Q A small hammer ?

A Yes, a small hammer.

Q Do you know how much weight the elevator is supposed to carry ?

A Not exactly, sir. I don't remember that.

Q As you were a couple of feet away you made a noise and he stopped.

49

A Yes.

Q You hit with your hammer ?

A Yes, a little hammer.

Q What then after that ?

A That is the time he came up, and I told him about checking the limit switches.

Q With you ?

A Yes.

Q Did he get into the car then ?

A Herman got in the elevator. We opened it, he looked at it, I looked at it, and he can't see nothing wrong but he said, of course, "Let me get a meter." You can't tell by the eyes, you know. "It looks good, but let me get a meter."

Q When you were checking the limit switches, how were you reaching these switches ? Were you standing or sitting or kneeling or what ?

Q What happened after that ?

A Standing, very normally, you could see in the box, when you open the box.

Q Would you mind standing up and just showing us about what level ?

A I would say about a level like this here, standing like this, you could see it.

50 Q You were looking right into the box ?

A In the box, yes.

Q So did you open the first limit switch box ?

A Yes.

Q Did you see anything wrong ?

A It looks normal to me and to Herman.

Q Is that when he said he would go get the meter ?

A That is right, he said "Let me get the meter."

Q How did he get out of the platform ?

A He stepped out of the thing, as a matter of fact his one foot was actually partially in the elevator when I heard a big noise. I heard a big noise, and then it was over. Actually Herman could have grabbed me, but it happened so fast.

Excuse me, sir.

The last thing, that's the last thing I remember.

51 Q How long was he in the elevator with you before this accident happened ?

A We opened the four screws, we took loose the plate, we took it open, so he looked in it and he looked in it. So it looks good. He says, "Now, but of course, let me check it with the meter,"the ohmeter". So the ohmeter was in his room. He said, "Let me get the meter". As he stepped out, his one foot was actually partially in the elevator, and all of a sudden I heard a big noise, Grrr, and here I am going down.

52 THE COURT: When you say he stepped out, he stepped out of where to where ?

THE WITNESS: Out to the main deck.

THE COURT : From where ?

THE WITNESS: From the elevator.

THE COURT : He was on the platform with you ?

THE WITNESS: He was in the elevator with me.

THE COURT : And he said he had to get the meter ?

THE WITNESS: Get the meter.

THE COURT : And he had just stepped out ?

THE WITNESS: He stepped out.

THE COURT : This is when you heard the big noise which is the last thing you remember ?

turned around and perhaps grabbed me but it happened so

THE WITNESS: Yes, your Honor. One foot was still in the elevator as a matter of fact.

THE COURT: And you were just below the level of that rim that is shown in the Exhibit which is the topmost part, point at which the elevator could go ?

THE WITNESS: Correct, your Honor.

* * * * * *

CROSS-EXAMINATION OF IMANUEL

64 Q You had told us that some of your work that day, you had to get inside the shaft to look at that stuff, right ?

A Yes.

Q And you said you could have come, or it is possible that a bosun chair could have been rigged, right ?

A Yes.

Q As I understand it, what you would have to do, then, is you put the elevator all the way down to the bottom.

A Down, yes.

65 Q And then you or who would do it, you and Herman or some of the deck men to rig it ?

A The bosun would usually do it.

Q You would call for the bosun and tell him you wanted a bosun's chair hung down there ?

A Yes.

Q As I understand, a bosun's chair, then you can sit and somebody will lower you down to whatever level you want to go to ?

A Yes.

Q If you did that work or Herman told you to do that, you wouldn't have had to stand on the platform. If Herman said, "We are going to use a bosun's chair, Leonard," then you would never have had to stand on the platform, right ?

A Yes.

Q But you fellows had a lot of work to do, right ?

A Yes.

Q And you didn't have time to do that, is that correct ?

A Not that we didn't have no time. When the elevator came up, while we were in the elevator, it was very practical for us to check the limit switch right away there.

* * *

67

Q All right. If I remember, I think you said this, you were the first fellow who rode on the platform and Herman was pushing with a screwdriver, closing the relay ?

A Yes, sir.

Q And you took the platform from the very bottom --

A Up.

Q -- all the way up ?

A Yes.

Q Did you bring it back down and up again ? How

68 many trips did you make ?

A I must have made one trip, then I brought Herman down, and back up.

Q All right. So between the two of you fellows the elevator came from the bottom up to the top, back down and then up again ?

A Yes.

Q Herman worked the relays with his screwdriver for the first trip you were on ?

A Yes, sir.

Q That means that from the very bottom Herman

rode you right on up to the main deck level where that hatch would open up, right ?

A Yes.

Q So you went past every -- you understand what I am saying -- you went past the whole length of the shaft from top to bottom ?

A Yes.

Q And in that shaft you have limit switches on the wall ?

A Yes, all of them.

Q You have got the cables hanging down, right ?

A Yes.

Q You got the inside of the interlock doors ?

69 A Yes, sir.

Q And you didn't see anything wrong with anything when you were riding up and down, is that correct ?

A None whatsoever. I would have got out right then and there, sir.

Q If you saw anything wrong with the cable you would have got off that car, wouldn't you ?

A That is correct.

Q When you got it up to the top you still didn't see anything wrong, is that right ?

A No.

Q Were the limit switches not operating at that point ?

A Well, I don't know if they was operating. This is why we suggest to check them.

Q When Herman puts his screwdriver into the relay, can he drive that machine right on up past a limit switch until you shout to stop ?

A Usually no. At the level, soon as it reaches the level from where the limit switch would cut it normally off, I watch carefully and I holler one time, he let go.

Q I understand that. What I am saying to you, Mr. Imanuel, when you are on the machine, if you wanted
70 to keep on going right past one limit switch, if you didn't say anything, you would keep right on going until you got to the next limit switch and then you would shout, "Herman, cut it out," right ?

A Yes.

Q Then he would have to stop the machine, wouldn't he ?

A He would have to stop it, yes.

Q He was in the control room ?

A Control room.

* * *

73

Q You took Herman all the way down that way, right ?

A Yes.

Q No trouble riding it all the way down, right ?

A No trouble.

Q It rides on two cables, right ?

A On two cables.

Q They worked perfectly, taking you up, taking

74 Herman down ?

A Right.

Q Then they worked perfectly again, bringing Herman all the way back to the top, right ?

A Yes.

Q When you got Herman up there, he then called you, he said, "Come on up, Leonard," right ?

A Yes, sir.

Q You said that this is a dangerous way to do it because you have got to be very exact, right ?

A Yes, sir.

Q When you are closing the relay with the screwdriver, if you run it too fast or you don't stop it in time, you can run it right up too high ?

A Yes, sir.

Q And I think you said if the elevator passes that upper level limit switch it could be very dangerous ?

A Yes, sir.

Q It could run into some of the other gear up there, right ?

A Yes.

Q You could damage --

A Loss of control, yes.

Q And you could damage the machine, doing that, couldn't you ?

A You could, yes.

Q You did not see exactly where the machine stopped or anything, the last time you took the screwdriver out.

MR.HEALEY: Withdrawn.

Q When you are standing down in the control room, you bring it all the way up, the last time, with your screwdriver in the relay. Herman says, "Leonard, stop." You stopped.

At that point you could not see exactly where it had stopped, could you ?

A No.

Q You had to walk up to the deck ?

A Yes, sir.

Q Then when you got up on the deck you found the platform to be almost at the top of that coupling ?

A Not almost. Down about, a few feet down, I would say two feet down from the level.

Q What I want to be clear about, up around that hatch on the main deck there was like a coupling around it, is that right ?

A Yes.

Q That is what I am talking about now. It had

76 come to what, about (indicating) --

A Lower than that.

Q I want you to tell me.

A About two feet.

Q When you got there, now, the machine is about two feet down from the top of the coupling ?

A Foot and a half, two feet.

Q I understand that. Herman was on the platform at this time ?

A Yes.

Q What was he doing, checking the limit switches or what ?

A No, he tell me, say --

Q You were generally familiar with the contents of

Q Let me interrupt you. I want to know what you saw Herman doing. Don't tell me what he said to you first. What was he doing ?

A He was standing erect in the elevator.

Q Any work he was going ?

A No. He tell me he cannot see anything wrong.

Q Then he said to you, "Leonard, come on the platform with me" ?

A Yes.

Q Now, you said no personnel is supposed to ride on the platform ?

77 A No.

Q Okay. But Herman Haag told you to get on, so now you had two people on the platform ?

A Yes.

Q Did you fellows take a look at the limit switch again ?

A No, this is when we were going to look at the limit switch, we were going to open the box.

Q The two of you got onto the platform. Did you do any work before Herman said, "I'll go get a meter" ?

A We opened the plate of the limit switch and we looked in it.

Q Both of you still on the platform ?

A Yes.

Q Then I understand after opening the plate and looking in it, that's when Herman says, "Leonard, I'll go get a meter."

A Yes.

* * *

82 RE-DIRECT

Q Mr. Imanuel, it is my recollection that on direct examination you testified that shortly before the accident occurred you were in the elevator car coming up ?

A Correct.

Q And Mr. Haag was in the room working the switches ?

83 A Correct, sir.

Q If my recollection is correct, Mr. Healey asked you wasn't it the case that you were in the elevator room, and Mr. Haag was in the car ?

A Yes. After I checked it, I said, "Herman, I cannot find anything wrong, but why don't you double check," so Herman went in the elevator while I was pushing the relay then.

Q But was this the time the accident occurred ?

A Before the accident. Before.

Q And the time the accident occurred, were you in the elevator coming up ?

A No. I was in the control room, and after the elevator reach the top, Herman called me up. So we decide to check on the limit switch. So Herman opened the plate. So we look at it. He said, "Take a look at it, Leonard." I got in the elevator; I took a look.

"I can't see nothing wrong, Herman."

But Herman said, "Of course, you can look with your eyes, but let me get the meter." As he stepped out to get the meter, his one foot was partially actually in the elevator yet, all of a sudden I heard a big noise, and here I was going down.

* * *

84 Q And then he came up to the main deck and got in the elevator car with you ?

A Yes, he did.

Q And he started to work with you for a minute or two, and then he stepped out and the elevator fell ?

A That is when it fell, yes, sir.

Q Is that the way it happened at the time ?

A I was at first in the elevator. Then Herman went and as he went up, then I went with Herman in the elevator. We opened the limit switches. As we open it, we can't see anything wrong by eyes and Herman say, "Let me get the meter," and this is how it happened, sir.

Q The time that the accident happened, when you fell, had you come up in the elevator ?

A No, Herman had come up, Herman.

Q And you were operating the switches ?

A I was in the control room.

* * *

85

Q Did you go all the way up to the top or not ?

A Not all the way, down below the level; so did Herman also, below the level.

THE COURT: About two feet below the level ?

THE WITNESS: I would say so, your Honor.

Q You came up to two feet below the level. Is that when you knocked with the hammer ?

A Yes, sir.

Q You told him to stop ?

A He stopped automatically.

Q What happened after that ?

A Then Herman went and double checked, while I was pushing the relay. So I brought him back up and it stop again at the same level.

Q You have the car up two foot from the level, and you are in it.

A Herman was in while I was in the control room then.

Q Herman was in it and you were in the control room ?

A Yes.

Q Was that the first time you had the car up that far ?

A Up all the way up ?

85A Q All the way up ?

A No. Herman did it once with me and I check everything and I can't see anything wrong, so Herman went and double checked.

Q Then the first time I gather you were in the car, Herman was at the controls ?

A Yes.

* * *

86 Q What do you do then ?

A I came out and Herman came in. I went in the control room and brought Herman down. Then I brought him back up. He called me to come up, say, "Leonard, I cannot see nothing wrong with the door interlocks."

So we decide to chedk the limit switch. So he opened the box, and he looked at it. He say, "Take a look." I got in the elevator and took a look, see nothing wrong.

He say, "Let me get the meter." As he stepped out to get the meter this is when it happened, this is when it happened, sir.

AFTERNOON SESSION - REDIRECT

12 Q See, he is not testifying. You have got to tell me of your own knowledge. Have you, yourself, any recollection of how long it was between the time he left and the time you heard the noise, which I assume was the time the accident occurred ?

13 A He stepped out, your Honor, and his one foot was actually in the elevator still, when all of a sudden I heard a big noise, like a grinding notice, R-R-R-R, and that's all I remember. In other words, he could have

turned around and perhaps grabbed me but it happened so fast, he had no time.

Q You mean he was that close to you ?

A Yes, your Honor, his foot was on deck, and the other feet in the elevator actually when this happened.

Q He almost went down with you, then, didn't he ?

A A split second he would have been in it, too.

Q He would have been in it, too ?

A Yes. Maybe the extra weight would have killed both of us.

Q This grinding noise, can you give me a better description of it ?

A As I'm standing, your Honor, I heard something, G-R-R-R, that's all I heard, you know. Before I haven't heard anything. I haven't knowed anything. Otherwise I wouldn't be in that elevator, your Honor, no.

EXCERPTS FROM THE TESTIMONY OF HERMAN HAAG
TAKEN BY WAY OF DEPOSITION - EXHIBIT 14

3

Q What is your full name ?

A Herman Haag.

Q Where are you living now ?

A 2110 Royal Street, New Orleans.

Q How long have you lived in New Orleans ?

A On and off since 1939.

Q Are you working at the present time ? I don't mean today.

A No sir, I'm retired.

****

4 Q Let's go back to December, 1971. You were sailing, at that time, correct ?

A Yes.

Q Were you assigned to a ship in December ?

A The NANCY LYKES.

Q Now, you were on board on December 10, 1971, weren't you ?

A Yes.

Q That is the day that this accident happened involving Mr. Imanuel, do you remember that ?

A Yes.

Q You were working in connection with Mr. Imanuel, weren't you, on the day of the accident ?

A We were working together, He was my second electrician.

Q The ship had been in a yard down in Galveston, undergoing a reconversion or lengthening process ?

A Yes.

Q You were not aboard throughout that reconversion ?

A No, sir.

Q When did you join that ship prior to December 10, 1971 ?

A It was either the 2nd or 3rd of December. I do not know exactly.

Q Where ?

A In Galveston.

Q At the Todd Yard in Galveston ?

A Yes.

Q Had you been a member of the crew of the NANCY LYKES prior to the ship putting into the yard ?

A Oh, yes.

* * *

Q How long had you served aboard the NANCY LYKES before she went into the yard for the reconversion ?

A I don't know whether it's a year or two. Early in

'69 I came aboard that vessel.

* * *

6 Q Was the second electrician, at the time of the accident, Imanuel ?

A Yes.

* * *

7 Q How long have you sailed all told as an electrician ?

A Originally I started in 1951, and I sailed as an electrician from '54 steady.

Q From 1954 until your retirement --

A Until '71.

Q You would sail as an electrician ?

A Yes. Excuse me. In between as second.

Q You would always sail as either the electrician or the second electrician from 1954 up until the time of your retirement ?

A Yes.

Q Did you have any training for that type of job ?

A Yes.

Q What was it ?

A I started as wiper, and I stayed as second electrician for about four years.

Q So this would be actually on the job learning ?

A On the job training, yes.

Q Did you have any technical schooling ?

A No. My own schooling; books.

Q You would study yourself and learn by doing it, working for years, is that right ?

A Yes.

Q Is this a Coast Guard rating ? Did you have to take any sort of test ?

A Yes.

Q I assume you did take such tests ?

A Yes.

Q You were rated by the Coast Guard as a qualified electrician ?

A Yes, sir.

Q Was that rating still in effect when you were on board the NANCY LYKES in '69 ?

A Same rating.

Q It was never revoked by the Coast Guard ?

A No.

Q You were always a qualified electrician ?

A Yes.

* * *

9 Q Now, on board the NANCY LYKES there is what they call an engineer's lift platform, isn't there ?

A Engineer's lift, that's what we call it; engineer's platform.

Q Which is like an elevator running up to the engine room spaces, isn't it ?

A Yes.

Q It was in connection with that machinery and the lift and the platform, the elevator -- that is where the accident happened ?

A Yes.

Q I want to question you a bit about that machine.

For your time on board the NANCY LYKES, was that equipment in operation the entire time ? I don't mean when she is in the yard, I mean when the ship is out sailing. Was the lift in operation ?

10 A During my entire time there I changed, perhaps, a coil, in the controllers.

Q I'm not getting to what you did.

A Was it operating ?

Q Was it operating, generally throughout your entire time ?

A At all times.

Q Nobody closed it down and said we would not use this for a few months ?

A No. It was open to anyone.

Q During 1969, up until December 10 of '71, that engineer's lift was always useable and operable ?

A And available, yes.

Q And it was generally used ?

A Yes.

Q Now, you told me you had served on some of her sister ships ?

A Yes.

Q Did those ships contain a similar engineer's lift ?

A Almost the identical.

Q Then you have had experience with this type of machinery on other ships besides the NANCY LYKES, is that right ?

A Oh, yes.

* * *

11 Q On board the NANCY LYKES, was there somebody who was assigned the task of maintaining this engineer's lift ?

A That is automatically the electrician's department.

* * *

12 Q Now, at any time during your service with Lykes Bros., were you given any specific instructions as to how you were to maintain the engineer's lift ?

A I had a book of instructions.

* * *

13 Q Mr. Doti is showing me Energy Elevator Company, Philadelphia, Pennsylvania, Engineer's Platform Hoist. Take a look at that.

Is this the book or booklet that you are talking about, that was given to you ?

A The chief engineer has all these books. The electrical books I automatically get from the chief, and keep them in my room. That was in my room at all times.

Q This booklet was in your room ?

A Yes.

Q This is the booklet that refers to the care and upkeep of that engineer's hoist platform, is that right ?

A Yes.

I don't know if that was the actual book. It was a book like this. I don'thave my initials in there.

* * *

14 Q Now, the book we were talking about, that we marked as Exhibit A, you had this booklet, I assume, on board the NANCY LYKES ?

A Yes.

Q You were generally familiar with the contents of that book ?

A Yes.

Q Were there any specific instructions in that book as to maintenance ?

A Yes.

Q Care and maintenance of the hoist ?

A Yes.

* * *

15 Q Is there any way for you to tell us the dates when you did perform care and maintenance on the hoist ?

A Yes, because I did, periodically, like once a week or every eight or ten days all of the quipment on the ship.

Q You say every week or every ten days you do something in reference to the platform hoist ?

A Yes.

Q This was part of your regular routine ?

A Yes, sir.

Q Would you personally do it or Mr. Imanuel, or both or either ?

16 A Sometimes together, but mostly myself.

Q Now, would you tell me, generally, what your routine would be on these weekly or ten day checks of the hoist ? What would you do as a matter of routine ?

A Well, I would go into what we call the motor room, engine room of that particular thing where the controllers are. I had to open the controller, first a visual inspection, look at everything. I test the electrical circuits, sometimes with a meter, sometimes by hand, just by looking. At the same time I'd look at the drum, I run the elevator by hand, push the up or down button. I run it up and down completely.

Q From the bottom of the shaft to the top ?

You said you run the car up and down completely. What do you mean ?

A I'm almost on the top. The motor room is almost on the top of the shaft. Now, I also look at the cable each time, because it was in front of me.

Q When you say you would run --

A I would run that elevator up and down.

Q Would you run her all the way down to the bottom ?

A Yes.

Q Then all the way up to the top ?

A Yes. I would observe the drum, because on the winches,

whenever there was just the least thing wrong with the cable, I would tell the chief mate, and automatically change the cable. Sometimes I would have the second electrician run the car for me, and I would be inside --

Q Inside what ?

A The car itself. He would run me up and down. When I was running the car I would just see if it stops at various levels, in the proper sequence, and I would observe and look for fish hooks or anything wrong with the cable. I did that about once a week. I did that automatically, just like I did on the winches.

Q I'll ask you more about that in a minute. I've got some other questions, and we'll come back to this.

You came aboard the ship or you rejoined the ship after she was in the reconversion stages, around December 2 approximately ?

A Yes.

Q You say you were on board for about a week before the accident involving Mr. Imanuel ?

A Right.

* * *

Q You have no specific recollection of what Todd was doing ?

A No.

Q Do you recall seeing them, however, in the engine room space ? I don't care what they were doing. Do you recall seeing the Todd people in the engine room spaces ?

A I seen them all over the ship.

Q Do you know whether or not Todd used the lift car- I'm not talking about the shaft, but the car itself - from December 2 to December 10 ?

A The day I came aboard the gangway must have been -- because it's the upper deck, the open deck. That's where I came aboard. I had to pass the elevator. It struck me funny that the hole is wide open. Either the elevator was there or the door was closed, that's our practice. By seeing the hole open, I looked and I saw a large pipe down there. I said to myself, "How are we going to use that elevator with that pipe in there?"

* * *

Q Was this platform hoist used to lift the materials in and out of the engine room spaces ?

A Yes. Mostly garbage. The wipers use it more than anything.

Q The purpose of the platform hoist was to haul material, be it garbage or anything else, stores ?

A Stores.

Q That type of stuff ?

A Yes.

* * *

Q During your time on board the NANCY LYKES, was it used, to your knowledge, strictly for freight rather than personnel ?

Q Strictly for freight. Only I used it. I rode in it, no one else. I used it for inspection purposes.

Q You told us you rode in it ?

A I rode in it.

Q I think, on the day of the accident, Mr. Imanuel was in it too ?

A He didn't ride in it, no.

Q To your knowledge, the only time personnel rode in that elevator car, the hoist platform itself, was when the electrical department was checking out the lift, is that right ?

A Yes.

Q Now, from December 2 through December 9 -- I'm talking now before the day of the accident -- did you inspect the engineer's platform hoist at all, over that period of tim ?

A I never got near it.

Q Over that period of time you did not make any inspection of it ?

A No.

Q Over that period of time you did not make any inspection of it ?

A No.

Q Do you know when the last time was prior to December 10 that the engineer's platform hoist was inspected or checked by anybody on board the NANCY LYKES ?

A I and Leonard were together inspecting it before we were laid off. In that week of the layoff we inspected all of
23 the equipment. We were looking for trouble. It is automatic, whenever we go in the shipyard, to find as much fault as we can and have it eliminated.

Q So on your last inspection of the engineer's platform hoist before going into the shipyard, did you find anything that needed repair on the --

A Not a thing, no.

* * *

25 Q You had assumed that it had been used by the ship's crew before you and Leonard turned to to conduct your inspection of it ?

A Yes.

Q You had assumed the engine room people would use this if they had any garbage or gear to send up and down, is that correct ?

A Yes.

* * *

26 Q You had assumed they used it to load stores ?

A Yes.

Q You told us that you learned from somebody else, the first assistant, that they did not use it for stores ?

A Yes.

Q Did you ever see, however, anybody using it for any purpose before you and Leonard did it ?

A No, sir.

Q What time did the accident happen ? Was it after lunch ?

A About an hour or two after lunch, yes.

Q In the morning, how long did you and Leonard work on that or with that platform hoist ?

A About two hours.

Q Did you inspect the cable in the morning before you and Leonard were using that to run up and down ?

A Well, I was inside the car, so I was interested in the controls.

Q You had seen a large pipe, you told us, in the shaft ?

A Yes.

Q Did you check to see whether any damage had been done

27 to the cables before you and Leonard started to ride on that elevator ?

A No. I had no idea any damage could happen. The only connection I had with the pipe, while it's lying against the shaft the car cannot be used.

Q It did not appear to you that it was going to damage the cables ?

A I had no idea it might. I didn't give it a thought.

Q I understand that you did not give it a thought. Was the reason you did not give it a thought, when you looked down it did not look like it was damaging the cables ?

MR.DOTI: I'll have to object to the form of that question.

A I wouldn't think of anything like that.

* * *

28 Q Looking at Exhibit A, Care and Maintenance, part of the normal inspection invoice, checking out the cables and the like for damage, right ?

A Yes. I did that thoroughly.

* * *

Q Throughout the morning you found nothing with respect to the way the car was riding or operating to indicate

29 there was anything wrong with the cables ?

A Of course not, no.

Q You told us you and Leonard were working on that thing at least an hour in the morning ?

A Yes.

Q You rode it from the very top of the shaft to the very bottom in the morning ?

A Up and down, yes.

Q You say up and down. What Im' saying, you ran it from the top of the shaft, which is near the main deck, down to the bottom, in the morning.

A Actually I started from the bottom up.

Q You started from the bottom where the car was resting, at the very bottom, and took it to the very top ?

A Yes.

Q You found nothing to indicate there was any damage with your cables, during that operation, is that correct ?

A I was only looking at limit switches. I wasn't looking at anything else.

Q As an experienced man, if you had found that the car was jumping or riding funny --

A That was something else.

Q You found nothing to indicate that there was anything wrong with the cables while riding it up and down ?

30 A No.

Q You told me you did not have specific occasion in the morning to check out the cable, because you were in the car, is that right ?

A Yes.

* * *

34 Q Now, when you were inside the car in the morning, could you see the shaft ? Could you see outside the car, the shaft itself ?

A Yes. It's an open car.

Q Could you see the cables ?

A I could, but I didn't look for it.

Q As you moved up and down the shaft, you could see different sections of the cables as the car moved up and down ?

A I only see the limit switches.

Q You could see the cables from inside, is that right ?

A Yes.

35 Q Did you notice anything wrong with the cable, visually, throughout the morning, as you rode up and down ?

A I never looked at them, at that time.

Q I take it you never noticed anything wrong ?

A Of course not. If I see something wrong, I jump out quick.

Q You did not see anything wrong ?

A No.

Q You were mainly concerned with the limit switches, in the morning ?

A Yes.

Q Just as general safety, if you did spot anything wrong with those cables, you would not ride in that car ?

A Of course not.

Q As general practice, don't you just generally observe the conditions around you as you are working ?

A Generally, yes, but this was where I actually had instructions by the chief engineer. Normally, I don't get any instructions from him.

Q You had the instructions to check your limit switches ?

A That's it. So that is something I concentrate on exclusively, you might say.

Q The chief engineer told you this ?

A Yes.

* * *

39 Q As I further understand you, the electrician's department were the only people on the NANCY LYKES who would care for the car, is that right ?

A The only brake --

Q Just answer my question. I think you told me it was only the electrician's department that cared for the car ?

A Yes.

Q So if you or Imanuel, whoever the second was, did not care for it nobody cared for it, because it was nobody else's job ?

A The chief engineer is responsible for the whole thing, actually, so if he ever would -- I could never know whether he did or did not.

Q You have no knowledge of the chief ever caring for this platform hoist ?

A I do not, no.

* * *

Q From 1:00 o'clock you and Leonard just directed all your attention to the hoist ?

A Yes.

Q What time did that accident happen ?

A Between 2:00 and 3:00.

Q So you had been working anywhere from one to two hours in the afternoon on the hoist ?

A Yes.

Q If you had observed them, what were you supposed

Q Were you riding the car again, for a while, in the afternoon ?

A Perhaps one more time to the top floor.

41 Q From the bottom back up ?

A From the main deck, the final ride was to the upper deck. I had Leonard bring me part way up.

Q What did you do for that one or two hours before the accident, in connection with the hoist ?

A Open limit switches and examine them visually.

Q Would this involve riding the car to the various limit switch levels ?

A Yes.

Q How long was that car actually in operation in the afternoon ? Was it from 1:00 until about the time of the accident that you people would be working with the car itself, moving it ?

A Only for a minute or so, to get from one deck to another. It wasn't riding no more. Just run it to a certain level and then stop.

Q And work on the limit switches for a while ?

A Yes, Finish it up and then move to another stop.

Q I think you indicated to us you were working from a lower level up, as you were proceeding ?

A Yes.

Q Were you following the same procedure then in the afternoon, you in the car and Leonard at the motor ?

A Yes.

42 Q At the time of the accident, I believe you had gotten this hoist up to about the extreme height it would go, is that right ?

A Not the extreme height. Below the extreme, because in order to be almost eye level with the limit switch, if I go -- if I let the car go its full distance, the limit switch would be below me. So I had Leonard stop the car before it reached the top, say about a foot or two, which we did on all levels.

Q Tell us what the limit switch is. I don't think I've asked you that.

A The limit switch opens the circuit, the electrical circuit, which stops the car. We set the brake on the motor, and that cable stops right there.

Q Of course, the limit switches are set so that the car will always stop at a given level when they are in operation, is that correct ?

A Right.

A I was looking for problems. In order to point it out

42 Q Are they intended to stop at each level in the engine room where there is an opening ?

A That's what they're intended for.

Q Normally it can be worked automatically, you can press a button and it will go up, and the limit switch will stop at a certain --

43 A If you use the button it will always stop by that limit switch.

Q That is a set stopping position ?

A Yes.

Q If you run it by the buttons, so it stops at the set position, you don't have access to your limit switch ?

A No, sir.

Q Therefore, it had to be run manually, so you could get it beyond that set position, so you could work on your limit switches ?

A Yes.

* * *

44 Q The intention was to get you in the car at a level where you could see the limit switch ?

A Yes.

Q You would have to shout out to Leonard, either up a little or down a little ?

A Or stop.

44 Q Did he ever have to maneuver you a bit to get you where you wanted to stop ?

A No.

Q He hit it right each time ?

A When I hollered stop he stopped.

Q He stopped you slightly below the level ?

A Yes.

Q In the morning, to back up a bit, were you working this same type of procedure, the car being worked manually

A Yes.

Q Were you working on the highest limit switches at the time of the accident ?

A Yes, sir. That was the final step.

Q No limit switches up above you ?

A No.

Q I assume you checked out all the lower limit switches ?

45 A Yes. They were completed.

Q They were all fine ?

A Yes.

Q In proper working order ?

A Yes.

Q Was the elevator car moving all right, during this entire procedure ?

A Yes.

45 Q Now, to get to the time of the accident, as I understand it, you were in the car ?

A Yes.

Q You had Leonard move you manually up, so you could get at the highest limit switches ?

A Yes.

Q I assume you shouted stop ?

A Yes.

Q He stopped the car ?

A Yes.

Q You were in position to work on the limit switches ?

A Yes.

Q At this point then, the car, as I understand your testimony, would be slightly lower than the ordinary stopping position at that level, is that correct ?

A Correct.

46 Q How much lower ?

A Perhaps a foot or two; a foot and a half. It was just low enough where I could easily step out of it. Normally it would be flush. So I actually stepped down. This way I stepped up and over.

Q To get on to the deck ?

A It was about a foot or 18 inches below where it should be.

Q Is that the normal way to check the limit switches in your experience, by riding the car up and down ?

A It was my normal way. Any other way would be to rig a bosun's chair, which would require too much time, and would actually be dangerous.

Q The only alternate way, that you know of, would be to actually rig a bosun's chair and go up and down ?

A Yes.

Q A man would have to be lowered right to the limit switches in the shaft ?

A Right.

Q That was not your normal way of operating to check these limit switches ?

A That's right.

* * *

47 Q How was Leonard operating this thing manually ? Was he up by the motor ?

48 A Yes.

Q Was he operating the motor itself, the winch ?

A No, the control panel. The control panel has many coils and wires which control the motor's operation. So when he pushes the up contactor in,making contact, the car automatically -- the brake opens and the car -- the cable coils on the drum and the car comes up.

Q He was manually closing these relays ?

A Yes. As long as he holds it the car keeps running.

Q He did not have a control box up there with buttons, he was actually working right on the motor by closing the switches by hand ?

A The motor controls by hand.

Q Is that the normal way to do it ?

A The only way.

Q That is the only way to run this thing --

A The only way, if you want to stop on any floor other than equal, on an even floor. There is no other way.

* * *

49 Q Now, after Leonard stopped the car at your command on this last limit switch, did you call for him to come to you ?

A Yes.

Q The car remained stopped ?

A Stopped in one position.

Q Once he lets that relay open up, the braking device on the motor is activated ?

A No It's deactivated. It's a mechanical brake. The minute he leaves his hand off that that brake sets.

Q When the electric circuit does not run through the brake the brake is activated ?

A The brake opens through electricity. Without electricity it's always closed.

Q When there is no electricity going through the brake, the brake ceases ?

A It's solid, no movement.

Q When you would tell Leonard to stop he would cut off the relay so there was no power ?

A No power.

Q Which would activate the brake ?

A Yes.

Q Then the car would be stopped ?

A Stationary.

Q Because of the brake up on your motor ?

A Yes.

Q That is what occurred, as far as you know ?

A Yes.

Q Leonard did come to you then ?

A Yes.

Q Did he come into the car with you ?

A Yes.

Q How long were both of you in the car before the accident ?

A A minute or two.

Q What were you doing ?

A We were just visually examining the limit switch after we had the blade off, to see if the thing is making connections.

Q You did not do any other work in the car ?

51 A No.

Q Up to this point you had encountered no difficulty with the operation of the cables in the car, is that right ?

A No.

Q You told me that you did not make a specific inspection of the cable, up to this point ?

A No. I was interested in limit switches only.

Q From the operation of the car, you did not know anything was wrong with the cables in movement or the way it lifted or operated ?

A Nothing unusual, no.

Q After a minute or two, when you and Leonard were checking those last limit switches, I understand you left the car ?

A Yes

Q What were you going to do ?

A To get a meter to check the continuity on that particular switch.

Q Was it, at this point, that the accident happened ?

A With one foot on deck, that moment, when my foot was on deck, the car left.

Q The car fell down the shaft to the bottom, is that right ?

52 A And him standing straight up looking at me.

Q Did you hear or see anything at the time that was out of the ordinary ? I know, of course, the car falling down to the bottom is not ordinary. Anything else ?

A I happened to meet his eyes, and as I stepped out there was a peculiar expression on his face. I said, "What the hell is the matter with him", but at that same instance he felt something or heard something that I did not.

Q You neither saw nor heard anything out of the ordinary, except that the car fell down ?

A It suddenly was going, yes.

Q Was this a sudden fall ?

A What ?

Q As you stepped out, did the car just suddenly fall, like a free fall down to the bottom ?

A Yes. A split second.

Q It did not start to work its way down ?

A No, because I would have grabbed him or he would have grabbed something. It was so fast, like lightning.

* * *

56 Q After the accident, did you inspect the cable or cables ?

A I stayed so far away from that elevator. I was frightened to just look at it.

Q You did not inspect it ?

A I never saw the cable until sometime later when someone showed me a piece of cable. But that particular day, no.

Q That's all I'm talking about.

On December 10, 1971, the day the accident happened, you did not inspect, after Leonard's accident, the cable, while it was still in the shaft or on the drum, is that correct ?

A After I got Leonard out of that car I stayed far away from that elevator.

Q With the accident just having happened, is it correct that for that reason you did not make an inspection of the cables yourself, while they were still in the shaft ?

A I inspected nothing afterwards.

Q At some later date somebody showed you --

A Or pointed out where the cable broke. Now, I do not recall whether someone showed me a piece of cable or pointed it
57 out in the shaft, and said, "Look at that cable, it looks like it's cut."

Q You do recollect somebody showing you or pointing out to you the cable ?

A Yes.

Q You can't remember whether it was still in the shaft or had been taken out of the shaft ?

A No, I do not know.

Q You just said it looked like it was cut.

A Normally, a cable would show, when it breaks, strains here and there, uneven ... this looked like almost a clean break, you might call it.

Q I think it has been described earlier. Would you agree that it looked as though somebody had hit the cable with some kind of sharp instrument ?

A I don't know about sharp instrument.

Q It did not look like it had been rubbing and unfrayed and came apart ?

A No.

Q It looked like there was a sudden blow applied against the cable ?

A That's right.

Q The cables were neither frayed or unravelled, but cut through ?

58 A That's what it looked like.

Q Do you have any idea what caused the cable to break like that ?

A I have.

Q When did you get this idea as to what caused the cable to break like that ?

A That ball and chain that they used.

* * *

59 Q On December 11 you had no idea ?

A No. The following day I was still in a fog. It upset me so I couldn't think straight.

* * *

67 Q The cable is the only thing that supplies the lifting or lowering power ?

A Correct.

Q Once that cable was severed through, you have no way to lift or lower your elevator, isn't that correct ?

A That's the only thing that holds the elevator. That's the brake on the elevator, as far as I'm concerned.

Q The cable is the sole lifting power on the elevator ?

A Yes.

* * *

72 Q Was that part of your area of maintenance and care responsibility, the pulley and sheaves and wheels ?

A I don't think it would be my area.

Q Did you not, as part of your regular duties, take care of those sheaves up on the wall of the shaft ?

A No.

* * *

73 Q Do you know whether any of these sheaves were bent or deformed, in any way ?

A If they were deformed in any shape or form, I would certainly tell the engineers about it, yes.

Q You don't know whether or not these sheaves on the shaft wall were bent or deformed, is that correct ?

That was not your job, you told me.

A You see, my visual inspection -- once the car is over my head I look, and if I see something unusual I would notice it.

Q Did you notice it ?

A No. I noticed nothing wrong.

Q Did you notice any deformity at all ?

A No.

* * *

73 Q You would not deny that it is possible that these
74 sheaves or pulleys, whatever you want to call them, on the shaft wall, were bent or deformed ?

\- - -

A Had they looked unusual, I would know about it. I would observe an unusual operation, yes.

Q Was your job to observe such irregularities ?

A It was my job, yes.

Q If you had observed them, what were you supposed to do ?

A I'd tell the engineer.

Q Was his job or the engineer's department to maintain that type of equipment ?

A Definitely, yes.

Q Do you ever recall making any complaint about any of the sheaves ?

A No sir.

Q Do you know, generally speaking, whether any of this equipment, the car, the sheaves, the cable, the winch, required lubrication ?

75 A There were certain lubrication which I did not take care of. I did no lubrication.

Q That was not your job as electrician ?

A No.

Q Do you know if anybody lubricated this machine ?

A The first engineer, I presume, did it. I did not see him do it.

Q As I understand your testimony, it is not the job of the electrical department to lubricate this machine ?

A No.

Q According to your knowledge it would be the engineering department's job ?

A Yes.

Q You never saw this machinery being lubricated, personally ?

A Personally, no.

CROSS EXAMINATION BY MR. DOTI FOR LYKES

80 Q You testified to Mr. Healey that it was not your responsibility to check the sheaves that were on top of the shaft, is that right ?

A Like all mechanical parts they are not my department.

Q Was it your responsibility to check the cable ?

A I, more or less, made that my responsibility, knowing that's the only brake, as far as I'm concerned.

Q When you made that your responsibility, was it your responsibility to visually inspect the entire length of the cable ?

A Yes.

Q When you made a regular inspection, like the one you testified to, before you left the vessel, for the first time, did you make a full inspection of the entire length of the cable, visually ?

A When I inspected it the last time before I got off the ship ?

Q Yes.

A I was looking for problems, in order to point it out and have it eliminated.

Q You just would not collect the cable that is on the drum, but you looked visually ?

A I wanted to see something wrong, yes. It was cus-

81 tomary, going into the shipyard, to find as much wrong as possible, and have it eliminated.

Q You saw nothing defective ?

A No.

Q No sign of any bruise or cut ?

A Of course not, no.

Q From whom did you receive an order to check out the limit switches ?

A The chief engineer.

Q Do you recall when you received that order ?

A After about a week aboard, the chief told me, "You better check out that elevator and limit switches."

He told me that the door has been opened, so check it out well.

Q What door ?

A The open deck door.

Q On the weather deck ?

A Yes.

Q The door that you saw open when you came aboard ?

A Yes.

Q On the morning of the accident, that is exactly what you did, checked the limit switches ?

A That's all, yes.

* * *

EXHIBIT 15

EXCERPTS FROM THE DEPOSITION OF RUSSELL BRIERLY

4 Q Mr. Brierly, what is your occupation ?

A I'm a marine surveyor and consulting engineer.

Q How long have you been a marine surveyor ?

A About 27 years.

5 Q Have you been to sea ?

A Yes, sir.

Q In what capacity ?

A I sailed in all capacities, fourth, third, second, first and chief engineer.

Q As surveyor, did you work largely in the marine field ?

A Yes, sir, primarily.

Q Whom do you represent as a surveyor ?

A Well, of course, we go to work for anybody that calls us, but we are the representatives for the Panamanian Bureau of Shipping in Texas, and we represent one group of German Underwriters from Brennan, and we represent all of the French underwriters, and we represent one segmant of the Swedish underwriters.

Q You have any licenses ?

A Yes, sir, I have a license, chief engineer, unlimited.

Q Do you have any license as a surveyor ?

A No.

Q Mr. Brierly, did you in 1971 make a survey on the NANCY LYKES ?

A Yes, sir, at the request of Royston and Rayzor.

Q What part of the ship did you survey ?

6 A Surveyed the elevator.

* * *

7 Q When you went on the NANCY LYKES, did you look into the elevator shaft ?

A Yes, sir.

Q From what point did you look into it ?

A From the upper deck.

Q And the upper deck, is that the upper deck in the engine room ?

A No, sir, the upper deck, it was the very top of the

8 elevator shaft.

Q Top of the elevator shaft ?

A Yes, sir.

---

8 Q What did you see when you looked down that elevator shaft ?

A I saw the remains of two pieces of cable. At

the top they were still secured to the bitter end, and they were leading down into the shaft.

Q Could you see the ends of them from where you were ?

A Yes, sir.

Q Was there any difference in the ends of the two cables as far as length is concerned ?

A It looked to me like they had parted at the same point on both cables, but one of the cables had a -- one additional strand extending maybe 10, 15 inches beyond the original cut or break.

Q Other than that one strand, were they the same length ?

A Yes, sir.

Q Did you measure those cables ?

A Yes, sir, I did.

Q And how did you -- in what way did you measure them ?

A I measured them with flexible tape.

Q Did you pull them up and measure them ?

A Yes, sir.

Q That measurement you made, is that recorded in your report ?

A Yes, sir, it is.

Q That is 11 feet, 8 inches ?

A Yes, sir.

Q And that was measured from the end where the break occurred to the -- where the cable was anchored ?

A Yes, sir, to the bitter end, the cable clamp of the anchor, yes.

Q Did that include the kink around the anchor ?

A No, sir, I couldn't measure that.

Q What did you observe in connection with the breaks in these cables ?

A Well, when I examined the end of the cables, it looked to me like the cables had been cut; I don't know how or why, but just appeared to be cut.

Q Looked as -- did it look as though they had both been cut at the same time ?

A Yes.

Q How close are these cables to each other as they hung in the elevator shaft ?

A They were parallel to one another, and as well as I recall, quite close together.

Q You mean half an inch apart or an inch apart or what ?

MR. DOTI : Or a few inches ?

THE WITNESS : A few inches, let's say, or two inches, something like that.

* * * *

11 Q Did you examine the cable on the drum ?

A Yes, sir, we did. We got ahold of, I believe it was the chief electrician, and we went -- and he opened up the winch room, and went in there and looked at the cables on the drum. And as best as I can recall, the cable was evenly wound on the drum.

Q You mean both cables were the same length on the drum ?

A Yes, sir. Well, I don't know about that, but I mean the lays of the cable on the drum were all even; in other words, they hadn't jumped or criss-crossed.

Q Oh, I see.

A Or kinked.

Q What was the condition of the cable as you saw it on the drum ?

A They were -- I saw no evidence of rust; I saw no evidence of what we call fish hooks. I just found that the cables were well greased.

Q By fish hooks, you mean broken ?

A Strands, yes, sir.

Q Strands ?

A From as much as I could see on the top of the drum.

* * *

CROSS EXAMINATION

12 Q You were over there, according to this report, which is dated the 15th, on the 11th of December ; is that right ?

A Yes, sir.

Q And where was the NANCY LYKES when you went aboard her to conduct your survey ?

A In the Galveston yard, but I don't remember exactly what pier it was.

Q What facility ? Whose facilities ? What pier ?

A Todd-Galveston.

* * *

15 Q All right. You had been told, I assume that there had been an accident involving that elevator shaft; is that right ?

A Yes, sir.

Q All right. What had you been told about that ?

A That the elevator shafts had fallen.

Q The car had fallen ?

A The car, the platform.

Q All right. Now, when you went there, did you take note of where the elevator car was ?

A Yes, sir.

Q Where was it ?

A On the bottom.

Q Bottom of the shaft ?

A Bottom of the shaft.

Q Did you inquire whether anybody had, prior to your survey, been in that area, touched anything, checked anything, changed anything ?

A No, sir.

Q You made no such inquiry, right ?

A No.

Q So you do not know whether anybody, be it ships personnel, Todd personnel, another surveyor, you don't know whether anybody else had been there before your survey to alter the situation at all; is that correct ?

A That's right.

Q That is all I'm asking you.

I take it you assume as you found, it was the

way it had been when it occurred; is that correct ?

A Yes, sir. No one gave me any information to the contrary.

Q All right.

A In fact, as I recall, I didn't even go down to the bottom of the shaft to look at the platform, because I understood that the investigations or the survey was to be continued on the vessel's arriving at New Orleans.

Q Well, had you been told that you were to restrict yourself to a certain aspect of the survey ?

A No, I don't believe so.

Q Well, you didn't go check the car ?

A No, sir.

Q All right. Was one of the purposes you were there to find out, if you could, what might have caused this mishap ?

A Perhaps. Perhaps, uh-huh.

17 Q Well, you would have noted that, would you not ?

A Well, I mean the cable failed; that's what caused the mishap.

Q I mean if you were able to determine what caused it to fall, that would have been one of your functions to report to the people, if you could have

determined the cause of the cable failure ?

A No. I tell you when we have failure of a cable, or a crankshaft or tailshaft, we usually recommend it be taken to the metallurgist.

Q All right. Did you make such a recommendation here ?

A No, sir.

Q Why didn't you ?

A I assumed that they would do that in New Orleans.

Q Do you know whether the cable was ever taken to a metallurgist ?

A Yes, I believe so.

* * *

23 Q All right. You did, I take it, make some inspection of the cable sheaves; is that right ? If you want to look at your report -- I note in your report, it says the cable sheaves on the outboard side of the elevator shaft was intact and in good condition.

A Uh-huh.

Q I assume you inspected it so you could make such a statement ?

A You could see it almost at eye level.

Q All right. You say the sheave moved freely
24 when turned by hand ?

A Uh-huh.

Q And I'm assuming that either you or somebody turned that ?

A Yes, I turned it because sheaves seize.

Q Did you take measurements of the sheaves ?

A No, sir, I didn't.

Q Now, what is a sheave ?

A It's the pulley, change direction of the wire.

Q Now, you note on here -- we're talking again, I believe, about a cable sheave on the outboard side of the elevator shaft. You say the guard to prevent the cable jumping out of the sheave was bent up on both ends instead of following the curve of the sheave ?

A Yes, sir.

Q All right. I assume, am I correct, when you say
25 that when it was bent up on both ends, that's not the way it was designed ?

A No, sir. I wouldn't think so, no.

Q The guard is meant to follow pretty closely the shape of your sheave; is that right ?

A Yes, the circumference of the wheel.

Q Is one of the purposes of having such a guard to keep the cable in its track ?

A I would think maybe that that guard was to protect that cable rather than to keep it in the sheave, because the weight would keep it in the sheave, I would think.

Q All right. Does it tend to keep the cable in the sheave itself, or guard ? I understand what you're telling me the main purpose is. What I'm saying is the secondary purpose to help keep it in the sheave ?

A I'm trying to think of the purpose, why it would ever get out of that sheave, you know, why that guard is there. But I kind of think, in analyzing it, that that guard is there to protect that cable rather than to keep it from jumping the sheave.

Q Okay. Now you say the cable was examined as far as was practicable at that time ?

A Yes, sir.

26 Q I assume you meant that was pretty much your visual or manual inspection ?

A Yes, sir.

* * * *

29 Q All right. Were you told where the platform was at the time it fell, from what position it fell ?

A Sir, I believe I must have been told.

Q Well, my information, I think, is that it was

30 pretty close to the top.

A Yes, sir.

* * * *

31 Q What I'm saying, did it look to you as if that cable had been severed with a blow ?

A Yes, sir.

Q In fact, I should say both cables ?

A Yes, sir.

Q Because you have described the cut as the same, right ?

A Yes.

Q So when you looked at it, it looked to you as if

32 both cables had been cut with a sudden force; is that correct ?

A That's correct.

Q While I'm pressing this, I want to be clear it didn't look like something had been riding over that cable or rubbing it for a period, right ?

A No, sir.

Q And you found that those cables were completely cut through except for this one 12-to-15 inch strand that was hanging out; the other was a clean cut through both cables ?

A Uh-huh. Well, now, it's not as if it was cut, but it parted even, yes.

* * *

33 Q Now once that cutter cut, when you got there, that elevator wasn't operative, was it ? You couldn't operate that elevator with that cut in it, could you ?

A The cable appeared to have been, but not severed, I mean, when I saw it, it had appeared to have been struck or cut, but, of course, not severed.

Q What I'm saying, when you got there, it wasn't operative, obviously, with the cable in that condition ?

A No.

Q Now aside from that, I think you told us the cable appeared to be normal ?

A Yes, sir.

Q All right. You found no evidence of any other stress or blows or whatever you call it, scraping ?

A No. We would be looking for kinks or rust.

Q That's what I'm saying. You found nothing like that ?

A No, sir.

34 Q All right. You did make some notes in here, recommendations you called them ? "Check the last renewal date of the cable."

A Yes, sir.

Q All right. What did you mean, just how long the cable had been in ?

A How long the cable was in.

Q Did you ever find that out ?

A No.

Q Did you inquire ?

A No.

Q Could you tell from your observing that cable, based upon your experience, whether she was a recent cable, an old cable ?

A No. The cable looked good.

Q You could not estimate its age ?

A No.

Q All right. Did you make any inquiries of anybody as to the maintenance procedures that the vessel had followed, if they did follow any relating to that elevator and its equipment and appurtenances ?

A Just what I could observe, it was pretty well maintained and greased and cared for.

EXCERPTS FROM TESTIMONY OF NOEL THOMPSON

2 Q What is your occupation, Mr. Thompson ?

A Marine surveyor.

Q Where is your office ?

A New Orleans, Louisiana.

Q And with whom are you associated ?

A The Salvage Association.

Q Is that the London Salvage Association ?

A It was the London, but it has been changed to The Salvage Association.

Q It was The London Salvage Association as of 1972 and 1971 ?

A Yes, sir.

Q Would you tell us or tell the Court, please, how long you have been a surveyor, Mr. Thompson ?

A Approximately twenty-eight years.

Q And what was your technical education ?

A In Rutherford College in New Castle for four years, and at the same time I was apprentice to a shipyard,

3 Wallsend Slipway and Engineering Co.

Q This is in England ?

A In England, New Castle on Tyne, England, up in their design and technical office.

I then sailed from 1941 to 1948 with the Ellerman Associated Lines and the Port Line, and hold a Chief Engineer's unlimited license in both steamships and motor ships.

Q Is that on British vessels ?

A On British vessels, yes.

I left the sea in 1948 and worked as senior engineer manager with the firm of Swan Hunter and Wigham Richardson, who are one of the major ship building, ship repair firms in Britain.

From 1949 -- no, 1950 through 1951, I was employed as an independent surveyor with M. Wawn and Son of Sunderland, England. And joined Salvage Association, London, at that time, in the end of 1951, serving in the New York office from 1951 until 1958.

In 1958 I opened the office for the Association in Jacksonville, Florida, and then in 1963 opened the office in New Orleans.

Q Then from 1963 to date you have still been in New Orleans ?

4 Q Yes, sir.

Q Working in the same capacity ?

A No. My present capacity is Deputy Chief Surveyor for North America.

Q North America ?

A Yes.

Q Through the years of your acting as a surveyor, would you tell the Court the type of work that you have been engaged in, the type of survey work ?

A In all forms of hull and machinery casualties, collisions, fires, explosions, striking wharves, machinery damages of all types, elevator -- well, not elevator, but wharf damages, and grain elevator damages, but not specifically manual elevators; investigations into suspicious losses and major casualties.

Q How about moving rigging, moving or standing rigging ?

A Yes, I have handled most of the -- recently handled most of the big moves of drill rigs, tows, anchors, winches, cables.

Q Your responsibilities have occasionally led you to inspect cables, then, or let's say the winches that are involved or other rigging of ships ?

A Yes, and towing cables, mooring cables.

Q And other mechanical rigs aboard ship ?

A Yes, sir.

5 Q But I gather you have never inspected an elevator, Mr. Thompson ?

A No, sir.

Q Could you tell us when you were called in to this matter ?

A On December 14, 1971.

Q As a result of that assignment, did you go aboard the NANCY LYKES ?

A Yes, sir, the same day.

6 Q Where was the vessel at that time ?

A Nashville Avenue Wharf in New Orleans.

Q And the vessel was afload ?

A Yes, afloat and moored alongside.

Q Was there a crew aboard ?

A Yes, sir. I don't know if it was a full crew, but there was a crew on board.

Q Will you tell us what you saw and what you did as you first came aboard ?

A Well, it is always general practice to go to the Chief Engineer's room or the Master's room and make onself known and introduce oneself, and in the

room were the various representatives of Lykes Lines, their Marine Superintendent, Mr. Peuler, was there, a photographer was there, and I think the Chief Engineer.

From there we went on up to the top deck, to the hatch, which had been opened; made a visual inspection from the top and requested that a bosun's chair be rigged in order that we could take a run down the elevator shaft to see if there was any evidence of damage, or what we could possibly find.

While the bosun's chair and the boom was being rigged, we then proceeded to the various levels below that deck where there were doors, and opened up the various doors which were locked.

We finally arrived down in the lower platform and opened that door, and the elevator itself was lying on the bottom.

At that point we then, if I remember correctly, we turned back up to the top deck, and I don't know whether I was first or I was the second to go down in the bosun's chair to inspect the guides and to inspect the shafting from top to bottom.

Q You mentioned we went down to the lower decks; who do you mean ?

A Well, the group, the Port Engineer, Mr. Peuler, was there, we had the photographer too and we were pointing out to the photographer different shots that we thought should be taken, and generally getting an idea of what we were faced with.

Q Were photographs in fact taken ?

A Yes, sir.

Q Did you observe the taking of those photographs ?

A Yes, the photographer went down on the bosun's chair after I came out.

Q Then the first close inspection you made was in the bosun's chair ?

A Yes.

8 Q Exactly what did you do in the bosun's chair ?

A Had the control of the descent and re-ascent operated so that wherever we thought there might be a suspicious mark or any form of a damage, or the general condition, we would stop the bosun chair and carefully look around and swing the chair around to see all the various points where there may have been contact.

Q What were you looking for at the time ?

A Just some general evidence of possible damage, something that could have caused the failure of the elevator.

Q Were you examining the guide rail ?

A Very carefully, both sides.

Q Is it a fact that your primary attention was directed to the guide rail ?

A It was one of the main points. I wouldn't say it was the only thing I was looking for, no.

Q Did you examine the guide rail from top to bottom ?

A From top to bottom, yes, sir.

Q On both sides ?

A On both sides.

Q What if anything did you find ?

A Apart from the normal marks of operation there wasn't any evidence of any damage.

Q What other inspection did you make, in addition to the guide rail ? Did you examine, for example, the sheave at the top of the shaft ?

A The sheave at the top, and also into the motor compartment, and I looked across from the motor compartment towards where the cables were parted, but really there wasn't anything we could do on that day as far as the elevator was concerned, because it was jammed down in the bottom of the shaft.

Q Then, did you continue your examination at some future date ?

A Yes, it was agreed that the elevator would be removed from the shaft and transported to Dixie Machine Shop in New Orleans, together with the cables, for further inspection the next morning.

These were removed during the night, and the further survey was held on the next day, which would be the 15th.

Q Were you present when the elevator platform was removed from the shaft ?

A No, sir.

Q And you thereafter, then, did inspect the platform at the Dixie Machine Shop ?

A Right, and the same day then went back to the ship to look into the lower section of the space of the elevator shaft, which I could not see the first day.

Q At the completion of your examination of the shaft and the NANCY LYKES and the platform at the Dixie Machine Shop, did you on some further occasion prepare a report ?

A Yes, sir.

* * *

11 Q I show you Lykes Exhibit 20 for identification, ask you if this is the report that you submitted at the conclusion of your investigation ?

A It is.

* * *

12 Q During the course of your inspection on board the vessel, were you able to examine any part of the car itself, during that inspection, while it is in the vessel ?

A No, and we didn't think it was the right time to do it, because it was lying down in a jumbled mess at the bottom, and really nothing could be determined from it, sir.

Q After you went to Dixie Machine, you made a thorough examination ?

A Yes.

Q How soon was that after ?

A The next morning.

Q Where is Dixie Machine ?

A In New Orleans, approximately three miles, three or four miles from where the vessel was berthed.

* * *

IN REFERENCE TO THE BROKEN ROPE SAFETY DEVICE

Q Did you make an inspection of that device ?

A Yes, I did.

Q What did you find ?

A That I could operate it, but of course it had been damaged in the fall, so it was impossible to say whether the damage had occurred before or after the fact. But it would move.

Q Did the bar actually turn when the pressure was released ?

A When the pressure was released, the bar would turn, yes, sir.

Q And as you could see it, the ratchets moved into position or would move into a position where they might engage ?

A Yes, where they might, but we didn't have a guide to try it on so we couldn't tell that they were definitely engaged.

Q Did you, during the course of your examining of the guide rail, make a special moment to examine to see whether there had been any marks of engagement ?

A I looked for that and couldn't find any marks showing where there had been any engagement.

Q Were you able to form any conclusion as to why this did not engage ?

A No, sir.

Q Did you observe anything in its makeup which could possibly explain why it did not, or its physical condition, aside from the damage that occurred in the fall ?

16 A No, it seemed to be a very elementary and simple method of constructing such a device.

Q Referring to your report, Mr. Thompson, did you ascertain what the capacity of the hoist was ?

A I have it in my report, but that was taken from the information supplied by Lykes Bros.

Q What was that capacity ?

A 1500 pounds.

Q What would that mean, the carry capacity of the platform itself ?

A I would assume it was the total loading on the platform.

Q Did you make an inspection of the hoist winch itself ?

A Visual inspection, yes, sir. And the cables were all in place at that time.

Q What did you observe with respect to the condition of the cables as far as their condition if anything ?

A When it was still on the drum and when we had it in the Dixie Machine Shop, when they were laid out for examination, they appeared to be in good condition.

Q Were the cables on the drum, how were they lying on the drum ?

17 A The drum itself was grooved to take, so that the cabling is led into the drum, and they were all lying right within the grooves.

Q There has been some mention of the fact that the cable was 5/16ths in size, whereas the specifications of the manufacturer called for a 3/8 inch cable. Were you aware of that ?

A No, sir.

Q Did you notice that in the report, I mean, in the manual ?

A No.

Q Would the grooves of the winch take a cable of 5/16th in size as well as one of 3/8th inch ?

MR. HEALEY: May I object. I think I can see a groove made for a larger cable will take a smaller cable. I don't see any relevance. The question is really a completely different thing, whether it should. This man has told us he has had no experience on elevators.

THE COURT: I accept the comment of Mr. Healey.

Q As you witness the wire lying in the grooves, were they lying properly in the grooves and the winch ?

THE COURT: He has said that at least three times ?

18 MR. DOTI: All right. Thank you.

Q As a result of your inspection, you had certain findings, Mr. Thompson, and might I just ask you to read items 2 through 7, please ?

A Item 2. Bolts and nuts up and down the elevator shaft, and those on the car were found in good condition and tight. Some damaged under the car as a result of the fall.

Q Did you personally inspect bolts up and down the shaft ?

A Yes, sir.

Q And what type of bolts and nuts were you talking about there ?

A Regular hexagonal bolts and nuts.

Q I mean on the guide.

A The guide is fastened in against the side of the elevator shaft with nuts.

Q And also those on the car ?

A Yes.

Q Item 3.

A Guide bars were examined from top to bottom of the shaft, and were found correctly lubricated, that is, not dry and without serious scar or abrasions.

Q That is the examination you referred to in the bosun's chair ?

A Yes, sir.

Q Number 4.

A The cables, except for the breaks were found in apparently good condition, without readily visible broken wires or frays. Both cables were broken at a point 16 feet 07 inches from the top. The ends of the break were not frayed, neither was there evidence of much untwining. The breaks appeared to be relatively clean and not resultant upon fatigue.

Q Mr. Thompson, will you describe for us under what conditions you inspected the cable itself ?

A Well, the first day, on the 14th, I inspected the cables when they were still within the elevator shaft, with the two attached to the bitter ends.

Q In other words, you saw them hanging in the shaft ?

A Hanging in the shaft, yes, sir. And then on the following day, days, they were stretched out in the machine shop of Dixie Machine, and measurements were taken at that time and the sketch was made of the various lengths.

Q From your visual recollection, was the cable that you examined the following day the same cable that you examined in the elevator shaft ?

A I would say yes, sir.

Q Item 5, sir.

A The idler sheave, which is the top sheave, had a few minor abrasions, but not such as would cause damage to the cables.

Q Would you explain what you mean by a few minor abrasions ?

A The minor abrasions were on the outside of the sheave faces rather than the area within which the cables run.

MR. DOTI: I believe I gave that exhibit to your Honor, the exhibit showing the pulley at the top.

THE COURT: I saw it, but I gave it back.

MR. DOTI: Here it is.

Q I show you Lykes Exhibit 3, Mr. Thompson. Is that the sheave you are referring to at the top ?

A Yes, sir.

Q Would you point out to the Court, please, where the abrasions are that you are referring to, or were, that you are referring to ?

A Well, there were very minor abrasions just running around the periphery on the face, which is in towards the shaft, but they were just minor abrasions that one picked up with one's finger but when I ran my finger around the groove I couldn't find any serious nicks or cuts in there.

Q The two grooves in the sheave ?

A Two grooves.

Q From your inspection, were the grooves comparable to those on the winch drum ?

A Well, they are a different type of groove, but condition-wise I would say yes, sir.

Q And how about the depth of the groove, would they be relatively the same depth ?

A No, not quite as deep as -- the grooves on the drum were not quite as deep as the grooves on the sheave.

THE COURT: You inspected the elevator machinery and the drum ?

THE WITNESS: Yes, sir.

THE COURT: On the ship ?

THE WITNESS: On the ship.

THE COURT : That was never removed ?

THE WITNESS: Not to the best of my knowledge. It may have been now that they have discontinued the use of the elevators.

THE COURT : So far as your work was concerned, you didn't see that at the Dixie Machine Shop ?

THE WITNESS: No, sir.

THE COURT : You saw that on the ship ?

THE WITNESS : Right.

Q When you examined the sheaves of the car itself, at Dixie Machine Shop, what did you observe in relation to their condition ?

A They were damaged. They were nicked and abrased and bent, but when that had happened there is absolutely no way of knowing.

Q The area that they were abrased, was that localized as if it might be the area which struck the bottom of the shaft ?

A No, it was generally around the circumferences.

Q Would you describe what you mean by the abrasions ?

A Nicks, minor pieces missing, scars, cuts, just not the smoothness that one would associate with a shave.

Q What was the bottom of the shaft made of, do you know, Mr. Thompson ?

A The bottom of the shaft itself ?

A Yes.

A Steel plate on the bottom.

Q Do you know the entire distance of the shaft ?

A Heightwise, no, I don't.

THE COURT: Well, that has been stated to be fifty to sixty feet, is that right, gentlemen ?

MR. DOTI: That is right.

THE COURT: I think you can concede the dimensions of the shaft.

MR. HEALEY: That is right.

Q As far as the sheaves were concerned, were they capable of being turned ?

A They could be turned, but not freely.

Q Could you determine why they wouldn't turn freely ?

A To the best of my recollection they were slightly bent and the framework was bent.

Q Could you form an opinion as to whether that bending was due to the fall ?

A I would assume that it fairly well had to be as a result of the fall, otherwise I don't think that the cables could track properly in the operation of the elevator prior to the casualty.

Q Item number 7, please, Mr. Thompson.

A The motor appeared to be in good condition, and this was visual examination of the hoisting motor from the space in the upper spaces.

Q There is a reference in your report to the broken rope safety. I believe you have already given your opinion on that, as stated in your report, it was moving freely, but you couldn't determine its condition prior to the casualty, is that right ?

A That is correct.

Q As a result of your entire inspection and investigation, both aboard the ship, at Dixie Machine Shop, and your review of the manual, did you form an opinion as to the cause of the failure ?

A I think in my report I gave a possible cause, I couldn't determine any actual cause.

Q Would you read your opinion, please ?

A The undersigned was unable to find any mechanical fault which could have resulted in the failure of the elevator cable, and can only suggest the possibility that during the course of recent conversion at Galveston, Texas, materials had been removed from the vessel through the elevator shaft, and that the cables had been damaged at that time, resulting in final failure on December 10, 1971.

Q You state that it was your opinion that the cables might have been damaged during the course of the conversion at Galveston, Texas ?

MR. HEALEY: Let me object. That is not what was said.

THE COURT : Sustained.

MR. DOTI : I withdraw that question.

Q Referring to the opinion that you have just read, Mr. Thompson --

THE COURT: Well, referring to what he has just read. You are injecting the word "opinion," which

26 is not what he is stating. Referring to what you have just stated. What do you want to ask him ?

MR. DOTI: I beg your pardon.

Q What facts, what were the facts upon which you based such a statement ?

A General discussion with personnel on the vessel, and by that I don't mean the crew themselves, but with the superintendents, as to what had been done and what could possibly have caused it; had anything been removed through the elevator shaft ? Was it the practice of the vessel themselves to remove large objects through there ? What could possibly have come in contact with the two cables ?

* * *

28 THE COURT: You see, if you are playing detective and speculating yourself into a conclusion, that is one thing. If on the other hand you are basing your conclusion upon objective facts which can be understood and evaluated, that is another thing. And it is very important for me to know what this suggestion is based upon, and I want you to tell us fully every ground that you have for making this suggestion.

THE WITNESS: The main one being that the two cables which parted at exactly the same position, which I think is most unusual, and which to me gave thought to something, regardless of when it was, must have struck those cables in some position.

THE COURT: Well, aren't you saying in effect that you can't explain the break of those cables, and so you are trying to find some explanation for it other than what you were able to observe ?

THE WITNESS: That is correct, sir.

* * *

30 THE COURT: The question would be: In your opinion, was there any mechanical failure which was causally related to this accident ?

THE WITNESS: Your Honor, there is no mechanical failure found that I could, that I could find that would contribute towards this casualty.

* * *

CROSS-EXAMINATION

36 Q And you found nothing wrong with the cable to either visual or touch examination ?

A Nothing worse than one finds in a well maintained, I would say a reasonably well maintained cable. You

have little spurs on, naturally.

Q What you are telling me, you found nothing out of the ordinary ?

A Ordinary, yes.

Q You did examine this, you call it an idler sheave ?

A Yes.

Q And that has also been described as the wall pulley or fixed pulley; would that be the same thing up on the wall ?

A Up on the top.

* * *

37 Q All right. You did state that the sheave itself had a few minor abrasions ?

A Yes.

Q All right. You stated that they were on the rim of the sheave, not in the grooves, is that correct ?

A I said on the outer edge of the rim.

Q Well, tell me exactly where. Where is the picture ? Do you have the picture ?

A No, I don't have any pictures.

MR.HEALEY: With your Honor's permission, this is Exhibit 3.

Q That is the wall sheave we are talking about.

38 A On this outer face around this edge.

Q And you indicated in your opinion that, of course, would not affect the cable if it was traveling properly in the channel ?

A That is correct.

Q Is it fair to state, though, that if the cable for some reason was out of the channel, that that might be an indication of how it rode on the rim or the outer face ?

A If it could come out of the channel.

Q That's what I am asking. Let's assume it could come out of the channel, would this damage you found on the sheave be consistent with a cable not riding in the groove but out of your channel ?

A No.

Q What ?

A No.

Q Do you know whether or not anything was done during the operation of that platform by the electricians that would tend to jiggle the cable out of the sheave ?

A No.

* * *

43 Q And you did examine the car sheaves, that is, the sheaves on the under carriage ?

A Yes.

Q And you indicated that your examination, of course, showed nicks, abrasions, scars, bending, is that correct ?

A That is correct.

Q You also indicated that a good deal of that damage was around the entire circumference of the sheaves.

A Yes.

Q Right ?

A Right.

Q And is it correct that you have also stated that you have no way of telling this Court when all of these nicks, abrasions, scars, bending about the circumference were suffered by these sheaves ?

A Well, I have said that I couldn't see what the condition was prior to the casualty.

Q That's what I am saying. As far as you know some, all or none of those damages could have been on the sheaves before the fall, right ?

44 A Right.

Q But you did state, if those nicks, abrasions, scars and bending were on the sheaves, it would affect the movement of the cable through the track, is that correct ?

A If they had been there, yes.

Q That is what I am saying.

A Yes.

Q You do not know ?

A Right.

Q They were of such a nature that they would affect the movement of the cable through those machined grooves ?

A They could affect the cable, yes.

Q Did you check the sheaves for lubrication ?

A There was plenty of evidence of lubrication.

Q So you did make a check, is that right ?

A Yes.

Q Just tell us how you checked it.

A With my hand and by the fact of trying to move them.

Q You couldn't move it, no ?

A You could get some movement, but you could not get a full revolution.

45 Q Was that a satisfactory way to test for lubrication when it was jammed because it was bent ?

A Well, the only other way to do would be to cut through the sheave. I saw evidence of lubrication both sides of the pin, sir, that goes through the pulley.

Q Right through the hub you are talking about ?

A Right.

Q All I want you to tell us is what signs of lubrication you saw. I assume -- you said you touched it.

A Yes.

Q Got grease on your hand ?

A Right.

Q Is that about the only evidence you found of lubrication ?

A Yes.

Q You said that the sheave wouldn't move freely ?

A Right.

Q It was bent, for one thing ?

A Yes.

Q That made it, did it not, impossible for you to determine whether or not it was a combination of the bending, lubrication, one or the other, that was contributing to the stiffness ?

A That is true.

46 Q All right. It could have been the combination of poor lubrication and bending, or just bending; you couldn't tell because of the condition.

A The one fact I do know, there was plenty of evidence of lubrication.

Q Plenty evidence. I didn't mean to interrupt you. Go ahead. You mean by what you touched ?

A What I touched.

Q All right. Isn't that the only evidence that you noted of lubrication ?

A Yes.

Q All right. Now on the broken rope safety device, you examined that from a mechanical standpoint ?

A Yes.

Q And you found that, I think you used the term, it was a good simple method for a fail safe brake, right ?

A I think so.

Q I mean theoretically it certainly fitted the purpose for which it was on there, right ?

A Right.

Q Its design was sufficient to stop the fall of that car, if it had engaged ?

A It would appear to, without going into the calculations for it, Mr. Healey.

47 Q Insofar as you examined it, it did appear to be a sufficient device to stop the fall of that platform ?

A Yes.

Q It did not though, did it ?

A No.

Q All right. Then is it correct that the failure would be something extrinsic to the design of the brake, because the brake was designed all right, some outside force as far as you know prevented that brake from engaging, is that correct ?

A Well, for some reason it didn't operate.

Q All right. Could it be, is this a possibility, prior damage to the brake ?

A Well, I didn't see any evidence of it.

Q Well, you said it was damaged.

A Yes, but I said it was damaged possibly as a result, and the photograph showed, of the fall.

Q I understand. I thought you said it was a possible damage suffered in the fall.

A I said it appeared in good condition, and moving freely. However, here again, it had been damaged in the fall.

* * *

49 Q Did you examine the entire length of cable, in other words, both sections after the severance ?

A When they were removed and taken to Dixie Machine, we laid them right out the complete length and meas them, and I examined them the full le gth.

Q At Dixie Machine did you have the bitter end that had been anchored into the wall ?

50 A Yes, sir.

Q And then you had everything beyond the break that had wound its way around the drum eventually ?

A Right, the complete length.

Q When you went on board the ship, I think it was December 14 --

A 14th.

Q -- were the bitter ends of the cable still anchored into the wall ?

A Definitely.

Q Okay. Did you measure them that day on board the ship ?

A No, sir.

Q I notice that you do have a measurement in your report. You say 16 feet 7 inches ?

A Yes.

* * *

51 Q All right, I understand. All right. You measured that bitter end after it had come off the ship and been taken to the Dixie Machine Shop ?

A Right.

Q On the 14th, where was the long end of the cable, the part that you know was below the severance point. Was that laying down in the bottom of the shaft on the 14th, when you went over there ?

A The part that was still on the drum ?

* * *

52 Q That is right. All I am asking you, after the cut, the bitter end was still hanging on the wall ?

A Yes, sir.

Q Where was the other end ?

A I cannot recall where the other end was.

Q You can't tell us whether it was still on the pulley, whether it was down in the shaft, whether it was up on deck ?

A Some was on the pulley because we felt what was on the pulley, but how much was on the pulley, Mr. Healey, I don't know.

Q But I take it the entire length of the cable is what you are talking about when in Item 4 you said they were found in apparent good condition, is that correct ?

A That is correct.

Q So you are talking about from the bitter end right around to the part that ended up on the drum, is that correct ?

A I am talking about two sections, 120 odd feet long.

Q The entire length was in apparent good condition ?

53 A Good condition.

Q I think you have explained that for us. Apparent means you looked at it, you touch it with your hands.

A Yes.

Q All right. The only defect you noted in that cable was of course at the point of severance, the cut ?

A Right.

* * *

IN REFERENCE TO THE SHEAVE AT THE TOP OF THE SHAFT

58 Q Are you able to tell us whether or not there is a relatively sharp edge on the guard, either from what you saw or from looking at that picture ?

A I would say it is a relatively sharp edge.

Q You have indicated that the sheave has relatively sharp edges at, what would you call it, the high point on each groove ?

A The rim.

Q Yes. That is the type, possibly that is the type of sharp edge that could cause the type of cut you saw in the cable, it would be consistent, would it not ?

A No, I wouldn't say that.

Q I am not asking you to give me an opinion that it did, you understand. You found a relatively --

A You would have to get the cables out of the grooves before you could do it.

* * *

59 Q Is that type of sharp edge on that guard or
60 sheave consistent with the type of sharp edge that, in you opinion, rendered the cut to those two cables ?

A I would say any kind of a sharp edge.

Q Including those on the sheave and guard, correct ?

A And if the conditions were correct, would cause a mark on the cable.

Q You say "any", so you are including the type of sharp edge that is shown in Exhibit 3, correct, if the conditions are correct?

A If everything is correct.

* * *

REDIRECT

64 Q Now, Mr. Thompson, I show you Lykes Exhibit 3, and Lykes Exhibit 1, and direct your attention to the bitter end of the cables that are hanging on the wall of the shaft, the bitter end of the cables.

Is that the condition they were when you first went aboard the NANCY LYKES ?

A It is.

Q They had not been removed from their anchored ends ?

A No, sir.

Q Could you look down the shaft and give us a rough approximation of the length of those cables, a rough one ?

* * *

65 A Right. The double loop above the coupling will be somewhere approximately 18 inches. The distance between the decks is 8 foot to 8 foot 6, and then the cords appear to extend down at least another 5 feet, so that would be somewhere around 15 feet 4 inches total length of that cable.

Q Would that be your same statement just by looking at this exhibit No.1, Lykes Exhibit 1 ?

A Well, you can't see the cables going down quite so far, but I would say yes.

Q I only wanted an approximate estimate.

A Somewhere in the order of 15 or 16 feet.

* * *

70 Q Do you know the question, Mr. Thompson ? Could you tell us a set of conditions that you were thinking of when you answered that question in the affirmative ?

A If the cables were out of the groove and they were laid across any sharp edge, and they were struck in any way by a heavy object, yes, you could sever the cables.

Q Could such severance occur while the cables were in the grooves ?

A No, sir.

* * *

RECROSS

79 Q When you went over there on the 14th, was there a severred end hanging off the drum ?

A As I said this morning, I can't recall the other -- I said I had seen this one but I could not recall the position of the cables off the drum, sir,

THE COURT: Didn't you say they were in the groove ?

THE WITNESS: I said some were in the groove. The cable was in the groove, your Honor, but I did not notice where the ends of the cable were.

THE COURT: But when you examined the cables that were supposed to be the same cables at the Dixie

80 Machine Shop, there were two pieces, is that right, there were not more than two pieces ?

THE WITNESS: Well, there were two sets of cables, actually four pieces, your Honor. In fact there were five, because one had been cut.

EXHIBIT 25

EXCERPTS FROM THE DEPOSITION OF ED WELSH

3

Q Would you give your name and address to the reporter ?

A Ed Welsh, W-E-L-S-H.

MR. HEALEY: Your address.

A 4720 Avenue K, Galveston, Texas.

Q How old are you, Mr. Welsh ?

A 48.

Q And how long have you been employed by Todd ?

A Nine years.

Q And what is your occupation ?

A I'm machinist leaderman.

Q Would you tell us just what that signifies ?

A Machinist Leaderman takes the machinists in my department, now, which is the Machinist Department, takes the gang, assigns them to their different jobs on the vessels and sees that the jobs are done properly, and procedure and so forth. I work directly under a foreman.

Q That's what I want to ask you next.

A Right.

Q Who did you report to, actually ?

A To a foreman.

Q Would this foreman be a different person or several ?

A Under my condition, it's one person.

Q And that was ---

A Angelo R. Urbina.

Q U-R-B-I-N-A ?

A U-R-B-I-N-a .

Q And as of 1971, through the period of,say, October, November, December, were you in that position ?

A Yes, sir. Yes, sir.

Q And was Mr. Urbina the man to whom you reported ?

A Yes, sir.

Q And what, if any, license or certificates do you hold that qualify you for that job ?

A There is none required on that job.

Q None required. Now, in that capacity, do you work on several ships that are in the Yard at the same time, or are you responsible for one particular job,or how do you operate ?

A There is, there is times when we handle more than one vessel at a time. This is very seldom, but there is times when we do work more than one vessel.

Q And do you work a day shift ?

A Night shift only.

Q Night shift ?

A Yes, sir.

8 Q In any event, the conversion job was completed, and after that conversion job, did you have occasion to do some additional work in the engine room of the NANCY LYKES ?

A Well, by my turnover, yes, sir.

* * * *

IN REFERENCE TO CERTAIN TURNOVER SLIPS

17 Q Would you read the first sentence, please ?

A Okay. "Number 1 and Number 2 sanitary pumps." Okay. "Removed both pumps from ship to shop. These are the pumps that were taken off hull number 17."

Q All right. Now, then, this is written by you ?

A That is correct.

Q After the job is completed, would that be done, or what ? Would it be after your tour of duty ?

A That was during my tour of duty.

* * * *

21 Q Now, would you be so kind to please read the items in this item sheet, all through, and possibly refresh your recollection, if necessary, as to the work that's revealed in your turnover sheet ?

A Right. Okay. Item 818, "Number 1 and Number 2 sanitary pumps."

MR. HEALEY: Reading Exhibit 3 now.

Q Exhibit 3, yes.

A "Disconnect, unbolt and remove pumps from foundations of the S/S JEAN LYKES. Rig up and transport to the

22 S/S NANCY LYKES. Fleet pumps into lower engine room of S/S NANCY LYKES. Unbolt and remove defective sanitary pumps from foundation of S/S NANCY LYKES. Install pumps removed from S/S JEAN LYKES on foundation, properly shim up and realign pumps to motors."

* * * *

29 DESCRIBING THE SANITARY PUMP

Q Mr. Welsh, would you have any idea as to the approximate weight of a pump of that type ?

A Say 60 or 63 pounds, sir.

Q And what would the overall dimensions be, roughly ?

A About 18 inches long and, I'd say, approximately 12 inches in height.

Q What is the pump made of, what material ?

A I wouldn't swear to this under oath. I'd say it's possibly cast steel.

* * * *

34 Q "We took strainer out and installed in line while we still had crane service." Would you tell us what that means, that sentence ?

A This apparently is where we was going to work past this 1:20 time schedule, and the crane service was going to be stopped at 1:20, which would be normal quitting time for the night schedule, and apparently, I've got this on board so the crane wouldn't be kept on overtime.

Q I see. So this would have been brought aboard with the crews of the crane ?

A Yes, sir.

Q And the pumps that we referred to just previously, would they have been brought aboard with the crane also ?

A Yes, sir.

Q And did you actually see these pumps coming aboard ?

A Normally, I see everything that is taking place. This is my job there. On the 12th and the 4th, '71, it's very possible I was working with the gang on the feed pump suction manifold, which is after this, and as far as actually seeing it, I can say my memory doesn't serve me well on that because of the procedure.

Q How about the strainer itself, would you recall having seen that come aboard ?

A No, sir.

Q All right. Now, do you know what access was used to
35 bring them aboard ? Was the elevator shaft used for that purpose ?

A The way the GULF PRIDES are constructed, that it wouldn't be any other means of transporting these in or out. You wouldn't carry them up stairwells; through passageways. Now, whether these were carried this way, I couldn't tell you, on this particular date, but I do know that there has been cases where the elevator shaft has been used. That's common practice. Not the elevator; --

Q Right.

A -- elevator shaft, with the use of a cable, not the load block lowered into it.

Q Tell us how that would be rigged.

A We used a 40 foot cable, which is attached to the ship's -- I mean to the shore crane, gantry crane, and this is to avoid lowering a load block into the elevator shaft. There is a flagman, always, topside. You have a flagman down below which is signaling the top flagman.

Q Now, would you recall whether you observed the crane at all on that occasion ?

A No, sir. I couldn't tell you exactly where I was at when the strainer was brought in.

Q Or the pumps ?

A I can recall working these pumps, but I couldn't tell you exactly where I was at when they was brought in.

36 Q All right. Now, referring back to Exhibit 3, which was the spec sheet revealing all this work, would you tell us how many movements of these two pumps were involved in that operation ? In other words, how many times did the two pumps come into the ship and go out of the ship ? My own count, for your information is four, but I'd like you to ---

MR. HEALEY: In total ?

MR. DOTI : In total.

MR. HEALEY: In seems so, huh ?

* * * *

37 Q Then, on reflection and reviewing the specifications and your own entries, would you say it was four separate movements of two pumps ?

A Yes, sir.

Q In and out ?

A Yes, sir.

* * * *

43 Q And could you give us an approximation of the dimensions ?

A I would say approximately 48 inches long, and about 24 inches in height.

Q When you're referring to it, are you referring to --

A From the bottom to the top.

Q The top being the valves ?

A The top of the valve wheel.

44 Q Right.

A Or hand wheel.

Q And how about the width ?

A Width, I would say about 16 inches.

Q All right.

Now, do you remember seeing this manifold actually removed from the engine room ?

A No, sir, I don't.

Q Do you remember seeing it taken off these floor plates ?

A Yes, sir. I do recall, because we had to come over the shafting. In other words, the way we had to come out. The reason I do recall this is the mechanic was raising hell because the night shift gets all of the dirty work.

Q All right. Tell us how this was done.

A By chain blocks.

Q All right. And where were the chain blocks being rigged ? In other words, where would they be secured to, the chain blocks ?

A Oh, this is a question I couldn't answer. It could be to any proper securing point.

Q Would you have to move this gradually through an area or would you set your chain block in one location and then pull it through, or would you have to --

A You would have to use two chain blocks, transport from one block to the next.

45 Q I see.

A Taking the original chain block, move to a new location and keep transporting, we will say, in spaces of six foot.

Q And you saw that accomplished ?

A Yes, sir. Yes, sir. I do remember that.

Q All right. Now, what is the location of this manifold in the engine room ?

A This manifold is located to the port side of centerline, approximately 3 foot off centerline to the port, after end of engine room, lower level.

* * * *

54 Q I just thought of one further question on the previous subject of the manifold: I don't believe I asked you to

55 approximate the weight of that manifold.

A I would say without the valve bonnets, a fair figure would be about three hundred pounds.

Q Okay. Thank you.

And with the bonnets ?

A 380.

Q Could you describe this relief valve for us, something about dimensions and characteristics ?

A Yeah. The relief valve, I'd say, would be about 12 inches in height and about 6 inches in diameter.

Q And what type of metal ?

A Monel, I would say, would be a ---

MR. WYLY: Steel.

A It is steel.

Q And could you approximate the weight of it.

A I'd say about 40 pounds.

* * * *

CROSS

65 Q Now, you told us, earlier, that you would assume a substantial part of those five items that we were discussing -- strainers, pumps and the like -- could have been transported through the engineers

lift shaft, is that correct " Just as a matter of procedure ?

A This would be the most logical way.

Q All right. Now, in your experience with Todd, was that an ordinary procedure to use such a shaft --

A Yes.

* * * *

66 Q And the ordinary and proper procedure at Todd would be to transport her up and down, either through a skylight or a shaft, whatever was available, is that correct ?

A That is correct.

Q I think you went into this with Mr. Doti. I don't know how far. You said there was a Todd crane available to assist --

A Yes, sir.

67 Q --- in handling such gear, right ?

A Yes, sir. Yes, sir.

Q The crane would be a shore based crane, wouldn't it ?

A That's right. It's a gantry, located on the pier.

Q The boom ?

A Yes, sir.

Q And from this boom, you set some sort of a sling, rather than block and tackle ?

A To clarify that, --

Q I want you to.

A --- Your load block is of such a size, that if you were to lower into a closed area, -- your block is sizable. By using a 40-foot sling, you can drop just the sling into the shaft.

Q All right. 40 foot is the length, and what is the dimensions, the diameter of the sling ?

A Approximately three quarter.

Q All right. Now, the normal procedure, since you told us you have no recollection of observing this, -- the normal procedure, is the boom of the gantry dropped, you know, placed plumb above the shaft ?

A Very definitely. Very definitely, always.

Q The line is then dropped in a straight fall, right down through the shaft, is that correct ?

A That is correct.

68 Q And then, whatever particular level within the engine room, you're going to transport stuff out, the connection is made at that level in the engine room with that line ?

A That is correct.

Q And it's hoisted straight up by the motor power of the crane ?

A That is correct.

Q You mentioned something about, I think you called them flagmen, huh ?

A You always have a flagman.

Q We want to know what a flagman means.

A He is the one that's giving the crane operator the signals. It's definitely what he wants.

Q You mean up, down, fast, slow, careful, quick ?

A That's right, Slow speed, fast speed, in the clear, boom right, boom left.

A All right.

A And so forth.

Q Now, there was a flagman up on the deck, the main weather deck ?

A Very definitely.

Q In other words, whether the shaft opened up into it --

A This would be by number four hold.

Q You said there was a flagman down below at some point, is that right ?

69 A In clarifying that, the one below would be your mechanic ---

Q All right.

A Then, he, in turn, would signal to the one flagging

above.

Q All right.

A As to what he wants.

Q All right. Once the strain is taken by that sling and crane, is it the flagman on the main deck and the crane operator who will control the lift or the lowerings ?

A It would be both parties. Not the crane operator. He's strictly operating through signals.

* * * *

70 Q Well, that's what I'm talking about. Now, the car, --

A Right.

Q -- The actual -- I guess you call it a car, is that right, the term ?

MR. WYLY: Elevator platform, cars.

Q We know what we're talking about. The elevator platform of the cars.

A We tried, always, to have this at the lowest level.

REDIRECT

74 Q All right. Now, tell me, this 40 foot sling that you refer to, could you just show me how it's attached to the hook of the --

A -- of the gantry ?

Q Yeah. Of the gantry. Just how was it attached?

75 A You have a law that says you have to have a safety hook right here.

Q Like a pelican hook ?

A That's right. This sling has an eye. Now, this is the opposite side of this. I'm having a very poor drawing here.

Q That's all right.

MR. HEALEY: So far, it's better than Mr. Wyly's anyway.

MR. WYLY : Agreed.

A You have a referral here, then, you continue on down, this 40 foot drop from end to end, and on the bottom, you would have a repeat of this eye here, which would be another thimble right here.

Now, these eyes are, we'll say, 18 inches in length, from here to here, and you would have the same thing on this length here, and then, the common practice would be a shackle is through here, and this 40 foot gives you your drop down in there, as I said before, to handle your load.

* * * *

76 Q How would you make up a pin for the manifold ?

A There is any number of ways, now, in a case like that, that manifold, if I would have done it.

Q Right.

A Now, like I say, I don't recall. I have handled other manifolds. In a case like that, the common practice of that manifold would go out standing up on it's end. In other words, that manifold would look like this. So anyway, you'd have four of these down the line. All right. So in this case here, you would be picking that manifold up. Because of its length, you would be picking that manifold up on its end. If you was going out, if you was going out the shaft, elevator shaft, you would pick that manifold up.

Q You have moved manifolds like that yourself ?

A Yes, sir.

Q How would you secure your sling to that manifold ?

A In this particular case, we would put a choker sling around this large side here. This is flanged. This was

77 originally another flange made up here. To make this more clear, this is the bottom; this is your piping ---

* * * *

79 Q Now, when this is brought out of the shaft, does it remain in that same position as it's transported to the land, to the shore ?

A Yes, sir. Until it's landed on the pier.

79 Q In other words, the sling stays in that position ?

A That's correct.

Q And would this be the same way that you'd rig the manifold or any other -- or any similar gear, to bring it down into the shaft ?

A Yes, sir.

Q We're talking about going out ?

A Yes, sir.

Q You'd rig it the same way coming back in ?

A Yes, sir.

* * * *

REDIRECT

82 Q Mr. Welsh, referring, now to your drawing - -

A Uh-huh.

Q --- and referring specifically to the representation, there, of that manifold, and the choker sling on there, you've drawn it so that the entire unit, when rigged, of course, is vertical ?

A Uh-huh.

Q Right ?

A (Nodding)

Q You said you stand the manifold on end; put a choker sling up around --

A Well, you don't start like that. To make it clear, you would have your manifold laying in a horizontal position.

When you attach your crane on this end, at this point, you have a holdback over here, which is another chain block, and as you enter, as you enter, you merely let off on this one and stand it up with the use of the crane.

Q All right.

A And you continue out. Now, you was talking about the way it hangs.

Q Yes, but before you get to that, --

A Okay.

Q -- that's what I think I want you to clarify for us. So the connection between your gantry sling and your manifold is made down in the engine room, outside of the shaft, while your manifold is sitting horizontal ?

A In the doorway.

Q Okay. And you attach your sling to the end of the manifold closest to the doorway, of course ?

A That is correct.

Q You still have a chain block holding on the other end, the opposite end ?

A That is correct.

Q Do I understand you to say that a strain is taken on that sling ?

A On the gantry.

Q On the gantry sling ?

A That is correct.

Q She starts to raise your manifold. The holdback, is that holding it back ? Is the thing maintained under tension the entire time then ?

A Until it's stood up.

84 Q That's what I'm asking you. Now, when she stood up, now, at that point, all the lift is in your gantry, right ?

A That is correct.

Q What, if anything, happens to this holdback ? Do you let loose ?

A You turn it loose.

Q All right. Now, take it from there. When you've turned loose your holdback --

A All right.

Q -- And she's lifting, the question I put to you ORIGINALLY: Does your manifold stay in a vertical position or --

A Well, not a perfect vertical, but due to the length and the weight and the width, she is almost in a vertical position all the way up.

Q All right. That's what I was going to ask you.

A Right.

Q And she was maintained in that almost vertical position throughout the lift ?

A Right. Right. That's due to the weight and the length and the width of it.

EXCERPTS FROM TESTIMONY OF ROGER KISTE,
METALLURGIST --- OCTOBER 1, 1975

74 Q Mr. Kiste, what is your present occupation ?

A I'm the manager of the metallurgical section at the Pittsburgh Testing Laboratory.

Q How long have you been in that position ?

75 A Since 1968.

Q And this is located in Pittsburgh, Pennsylvania ?

A It's located in Pittsburgh, Pennsylvania, that's correct.

Q What is the general nature of your occupation ?

A Well, I'm specifically a metallurgist, and consulting engineer to various industries on causes of failures of materials, metals specifically.

Our company deals with testing of various elements of soils, concrete, steels, chemistry, radiography.

My phase deals with the metallurgy. We have forty offices throughout the country, one in Paris, and also in Canada, in which, when material problems have on occasion to prevail, they are submitted to me for metallurgical analysis to determine the cause of the failure.

Q Approximately how many employees does your company have ?

A 1200.

Q 12 ---

A 1200.

Q 1200 employees?

A Yes. These are employees throughout the country. The Pittsburgh office has approximately 200 of the 1200.

Q Now, would you give the Court, please, the resume of your background and experience, education, so forth.

A In 1963 I graduated from the University of Pittsburgh, from the School of Engineering, with a degree in metallurgical engineering, at which time I went to work for the Copperweld Steel Company, in the wire, rope and cable division. I worked for Copperweld Steel as a development engineer in wire, rope and cables for five years at which time I obtained employment with the Pittsburgh Testing Laboratory in 1968, at which time I was given the title of Manager of Metallurgical Section and Consultant Engineer, and since that time I have been working with the Pittsburgh Testing Laboratory.

Q Then your formal education was a degree in metallurgical engineering?

A Yes.

Q At what University ?

A The University of Pittsburgh, plus during the time of graduation I have taken graduate studies towards a degree of, a doctorate degree in metallurgy.

Q Are you a member of any society ?

A Yes The American Society of Metals, the

77 American Society of Testing and Materials, the American Society of Corrosion Engineers, and the American Society of Welding Engineers.

Q And from 1968, when you joined Pittsburgh Testing Lab. to 1973, tell us the nature of your work.

A My work principally involved examining materials visually, making observation as to the character of fracture, studying the material under a stereomicropscope to determine the type of modes of fracture, sampling of the material metallurgically for preparation of what is termed microes, for examination under a metallurgical microscope at various powers, fifty power, perhaps as high as 1,000 power for observation of the metal crystals.

Q During all of this period with Pittsburgh, you were in the metallurgical end of the Pittsburgh Testing Laboratory ?

A That's correct.

Q And during much of this period you worked on wire ropes ?

A Yes. I have had occasion to work on perhaps as many as 24 to 30 wire rope failures for the determination of causes of failures, and of course I have examined many wire ropes which were brought in for routine testing, tensile strength testing as well as the previous experience
78 with the Copperweld Steel Company in their wire rope and cable division.

Q Do you recall approximately when your company was involved in the testing or investigation of the wire rope failure aboard the NANCY LYKES ?

A Yes. On or about February 22, 1973 I received a wooden crate which contained wire ropes from our New Orleans office for the purpose of determining the cause of failure.

* * *

THE COURT: Yes. You are referring to some papers, aren't you ?

THE WITNESS: Yes, it's a bill of lading.

THE COURT : Are there any other papers that you will be referring to in the course of your testimony ?

THE WITNESS: Well, yes, my report and my correspondence from New Orleans and also what we term a laboratory card which designates the approximate time at which we receive the work.

* * *

79 Q When the matter that you just referred to as a bill of lading, is that a bill of lading covering the shipment of the wire to you, sir ?

A Yes, from our New Orleans office.

Q Would you just again refer to that please, and tell us the date, if possible, the date of shipment from New Orleans.

A Yes. I stated it as February 22, 1973.

Q Now, then, after receiving the wire referred to in that invoice, or rather bill of lading, will you tell us what you did with the wire. What if any instructions did you receive with respect to the wire ?

A I received instructions from our office in
80 New Orleans concerning the quantity of wire rope that was submitted and the approximate lengths and that if any questions would arise dealing with my investigation that I was to call a Mr. Rizzo of the Lykes Line.

So, during the period of actual receipt and time of actual testing, the wire rope was in my possession at this time.

Q Can you tell us exactly what wire rope you did receive ? Can you identify the condition the rope was in, the sections, so on ?

A Yes. In my report I outlined the material as I received it. I had received 16 sections of wire rope and they were marked as follows: Wire rope No.1, two sections, top fractured end, red tag piece No.1 and mating bottom fracture, white tag No.1.

Wire rope No.2, two sections, top fractured and red tag piece No.2 and mating fracture and white tag piece No. 2.

These two in question, total four, represent the two wire rope breaks. Rope No.1 with a red tag on the top and a white tag on the bottom, Rope No.2, red tag on the top designating the top section, and the white tag designating the bottom section.

There were also submitted sections for
81 breaking strength test marked wire rope No.1, Test No. 1 through 5, wire rope No.2, numbered 6 through 10.

There was also two pieces marked Piece No.1, second end for hold only, and also for hold only Piece No.2, first end.

These various lengths of the hold only were approximately 16 feet long. The length of the break strength test varied between 9 and 12 1/2 feet as the measurements were given to me.

Also a group of four sections was marked, did not have any markings, and was designated as surplus only, use only if needed, 18 feet to 30 feet in length.

Q And what type of wire rope was this ?

A This examination was of a 5/16th inch diameter wire rope. My examination shows that it was, had the following types of characteristics, which I outlined:

Wire rope diameter, .323 inches. Number of strands 8. Number and nominal diameter of wires per strand, outer layer 9, at .022 inches; inner layer, 9 wires at .012 inches; a core wire of .027 inches. This would be determined a class 8 by 19.

Specifically the construction is an 8 by 19 Seale construction. The type of core was of fiber core; the lay was of right regular with a lay length of 2 inches.
82 It was not galvanized and it was of preformed construction.

Q Could you tell us at this time what you mean by lay ?

A The lay is the revolution of a strand around an axis from the top position revolving around, beneath

the cable until it comes back up to its top position again where it reappears.

Q And the lay length, what would that mean ?

A The lay length would be the distance between the point of surfacing, of two continuing surfacings of the same strand.

Q Now, when the wire arrived at your office, were the various lengths marked in some way ?

A Yes.

Q How were they marked, sir ?

A They were marked, as I explained previously, to the tag, wire rope No.1, two sections, wire rope No. 2, two sections designated for breaking strength 1 through 10, hold only piece 1 and 2, surplus four sections, 18 feet to 30 feet.

Q Could you identify at that time, let's say, the section running from the break to the bitter end where the cable had been anchored ?

A Yes.

83 Q Do your records show how that was labeled ?

A Yes. That was labeled wire rope No. 1, top fracture, red tag upper end, white tag bottom end.

Q Can you tell us the length of that piece ? Withdraw the question, please.

Were there two strands of similar length ?

A Yes. The top fracture of rope No.1 and the top fracture of rope No. 2.

Q And they were so labeled ?

A Yes.

Q Could you tell us the length of those wires, of the top 1 and 2 ?

A Approximately 16 feet.

Q 16 feet ?

A Yes. That is up to the point where both top wire ropes were anchored. This does not necessarily include the curl-back where it was clamped which perhaps the total length then would be closer to 17 feet.

Q Was that length referred to --

MR. HEALEY: May I interrupt? Could you either read the answer back or if it is easier just have it repeated. That does include or does not include a curl-back ?

THE WITNESS: 16 feet which does not include
84 the curl-back, of approximately another foot or foot and a half.

MR. HEALEY: If it is all right, your Honor, I could clear it up. What are you telling us now, 17 feet all told ?

THE WITNESS: It is approximately 17 feet. These are approximate measurements.

Q Was there a measurement of that 1 and 2 top wire referred to in your report ?

A Yes.

Q Would you show us where it is referred to, please.

A It would be the No.4 and No. 9.

MR. DOTI: On page 2, Mr. Healey, Test No. 4 and 9.

Now I read Test No.4, it says, section from top fracture approximate length, feet, 12. And then I read, Test No.9, from top fracture, approximate length, 12 1/2.

Q Could you explain how you just mentioned they were approximately 16 feet ?

A Yes. As I stated before these measurements were given to me and I never actually took the measurements myself.

* * *

86 Q Mr. Kiste, isn't it a fact that I personally told you that some question had arisen regarding the length of the No.1 and 2 ropes of the section that ran to the bitter end ?

A That is true.

Q And I asked you to check your figures on your report ?

A Yes.

Q And that request was made this week during the trial ?

A Correct.

Q And I believe you said you checked in two methods ?

A Yes.

Q What was the first way you did it ?

A The very first way was by taking the photograph --

Q Which photograph ?

A This would be figure No. 1.

87 Q Shown in your report, figure No. 1 ?

A Yes; and laying a string directly, superimposing the string on its total length from cut end to failed end; then using the reference yardstick, determining the actual length or approximate length, within a few inches of the wire rope.

Figure 1 is the as-received fracture of the top section of No.1 rope; figure No.2 is the as-received fracture of the bottom section of rope No. 1.

MR. DOTI: I think at this point I should have your report marked for identification.

(Lykes Exhibit 38 marked for identification).

MR. DOTI: You have a copy of this, Mr. Healey?

MR. HEALEY Yes, I do.

Q I show you Lykes Exhibit 38 and ask if this is the report that you submitted as a result of your investigation and testing ?

A Yes.

MR. DOTI: I will offer this in evidence. Any objection ? If so, we will just use it for identification.

MR. HEALEY: Let me phrase this -- it is an
88 objection or a suggestion -- I don't know why we don't get an exact measurement now. You have a thread and a fellow pacing it off instead of doing this.

I have no objection to that except I don't think it is the best evidence, sir.

THE COURT: I will take it for what it is worth and I hope before we are through we will have an exact measurement.

MR. DOTI : We will. I would like to get this marked so we can refer to the photographs.

(Lykes Exhibit 38 received in evidence.)

Q The first way you checked this measurement was by a scale, some type of a scale manipulation ?

A Yes; the same principle as used for example on airline photography where they use a reference of known length and they are able to determine the size, the plot of land, whatever you have.

Q And you use a reference ?

A A reference at the bottom of the figure.

Q And this photograph was of the wire as it was received by you ?

A Yes.

Q After that wire was received by you, was it

89 altered in any way by you ?

A Subsequently, yes.

Q What if anything did you do to it ?

A A breaking load test was taken from that wire rope.

Q Was any part of this rope cut off ?

A Yes.

Q Would you say how much ?

A Approximately 2 to 2 1/2 feet from the clamped end or the bitter end was cut. From that point I went up approximately 5 feet to obtain my tensile sample.

Q So how much of the wire rope remained from the breaking point towards the bitter end after you made these cuts ?

A Approximately 10 to 11 feet.

Q And is that the wire rope we have in court today, that section ?

A Yes. The complete length of the wire rope is shown from the bitter end cut next to the 5 foot length socketed end for the tensile speciman which went between the clamped or bitter end and the remaining length of the failed rope.

Q Do we have in court also the other section that you tested, the part you cut off ?

90 A Yes. As I explained, that is the section with the -- everything is there, the total length is there on both rope 1 and rope 2.

* * *

91 Q Have those tests altered the length of those sections of the rope that you have in court here today ?

A The only alteration would be to the tensile, five foot tensile specimen. Perhaps there has been some elongation of a half inch or an inch or so, but the relative lengths would be still in the sense of five feet, whether it is five, five foot three.

Q In other words, when you put a tensile strength

92 onto it you get a slight elongation?

A Yes.

* * *

94 Q Now, then, would you refer to your report and tell us the procedures you went through in the testing of these wires ?

A Yes. After identifying the tape and character of the wire rope I proceeded to take seven photographs on each wire, wire rope No.1, and another seven on rope No.2. They are the same type of photographs. They duplicate, one duplicates the other. That is, on figure No.1 and 2, I showed the top and bottom lengths of wire rope as I received them in my laboratory. That is figure 1

95 and figure 2.

Q And figure 1 and 2, are they the photographs you took at that time ?

A Yes, they are so designated, yes, as being the top fractured section as received, they show the fracture on -- figure 1 shows the fracture and the kink of the bitter end where it was clamped.

On Figure 2 is the bottom half, so to speak, of that fracture and it shows its total length as received.

Q And the tag that is on the wire, at least on figure 2, is that tag still on the wire today ?

A I believe it is, yes.

Q Incidentally, at this point, may I interrupt.

You kept that wire in your possession until when ?

A Until last Monday, I sent it air freight to your offices, this past Monday.

Q What other photographs did you take ?

A Then, to follow the sequence, I took figures Nos. 3 and 4 which showed the closeups of the strands. Figure 3 would be the closeup of the break in figure No. 1, and figure No.4 shows the closeup of the break, of the bottom section in figure No.2, so you can get a better view of what has taken place.

96 Q And would you tell us what figure 5 represents ?

A Figures 5, 6 and 7 were taken on figure No.4, which is the bottom fractured end. Now they show closeups of individual strands. While figure 4 shows the closeup of the wire rope, figures 5, 6 and 7 show the closeup of the individual strand.

Q Would you tell us which strands ?

A Yes. Figure 5 shows strand No.1, as you count from the top of the figure with the ruler to the bottom.

Q That would be the strand directly under the rope ?

A Yes, under the core.

Q Under the core.

A Figure 6 was of the fourth strand, and figure 7 was of the No.6 strand, as you are numbering 1 through 8, top to bottom, the bottom being the ruler side. These were taken at amagnification of seventh power.

Q Now, these are the strands that make up the rope ?

A There are eight of these strands to make the rope.

Q Did you photograph all of the strands ?

A No. I selected randomly three strands out of

97 the eight to show the typical type of damage that was present.

Q What was the basis for your selection ?

A Convenience; merely random convenience, whichever strand laid nice to be photographed, nothing particular.

Q But all of the strands are represented in the figure No. 4?

Q No.4 shows all of the strands, yes. Then I repeated the same sequence for rope No.2 on figures 8 and 9 showing the top of rope No.2 as received, and this would be the one that had the bitter end, it shows the kinking up in the right corner, and I show the mating fracture wire rope on figure No.9 of rope No.2, and the tag so identifies it. I show the closeup on figure No.10 and No.11 of the breaks of rope No.2, the top side and the bottom side, and again I took pictures, photographs 12, 13 and 14, which show the closeup, in this case randomly selected, the third, fourth and seventh strand, and reference to figure 11, again counting from the top of the ruler to the bottom and these were taken at seventh power.

Q When you make a random selection do you attempt to cover the extreme, any extremes in difference of the strands ?

98 A If there is a situation which is peculiar to the balance of the strands, I may seek this out, to show an unusual effect. In this case it was not the case, so I selected merely on the basis of which section laid the best, was most representative of the type of fractures that was involved.

Q I know there is another photograph or two; figure 15 and 16, Mr. Kiste.

What do they represent ?

A These are photomicrographs showing the typical type of micro structure seen under the microscope of the wires of wire rope No.1 and wire rope No.2 respectively, rope No.1 being figure 15 and rope No.2 being figure 16.

These are involved in the metallurgical examination, using microcs, where we take a wire, placing it in plastic, grind and polish the wire to obtain a very mere finish. We etch the sample, and this shows us the makeup of the steel used in the wire rope.

Q After photographing these sections or in the course thereof, did you make a visual inspection of these sections ?

A Yes.

Q You did this personally ?

99 A Yes.

Q And what were your findings in those respects ?

A I observed that there were nicking and flattening at the fracture site of the outer layer wires and --

Q Excuse me, are your findings expressed in your report, sir ?

A Yes.

Q Could you refer to it; are you reading from your report or --

A I am using it as a reference. This would be on page 4.

Q Thank you.

A And abrasion and flattened areas was also observed.

* * * * *

EXCERPTS FROM TESTIMONY OF ROGER KISTE,
RESUMED OCTOBER 2, 1975

After lining up sections of cable Mr. Kiste measured them and reported as follows:

On all of these measurements, I took actual measurements of the -1 exhibits: 39-1 and also 40-1; the actual measurements of 39-2 and 40-2 respectively, Wire Rope No.1 and No. 2, and I added a five-foot length which I had cut out for my tensile specimen.

* * * *

Q Did you make a visual inspection of the impact area wires, of the strands and the wires in the impact area ?

A Yes. As I stated --

MR. HEALEY: Could I have him specify what he determined to be the impact area.

Q Would you refer please to --

MR. HEALEY: 39, 40.

Q I show you Lykes Exhibit 39 for identification -3. Is this one of the areas you examined?

A Yes, the areas of fracture that I examined were between 39-3, 39-4 and 40-3 and 40-4.

Q So it would be the area between the upper and lower sections of this fractured area ?

A Yes.

Q These are both 39 exhibits. One is 4 and one is 3. Would these be the area that you examined ?

A Yes.

* * * *

23 THE COURT: Well, so far, he says that the impact are that he's referring to is between 39-3 and 39-4 in one instance, so you can stay with that.

A Yes.

THE COURT: No doubt about that in your mind ?

A No, sir.

* * * *

27 Q Do you, in your report, have a photographic enlargement of any of these sections ?

A Yes.

Q Would you refer to that, please ?

A Figures 5, 6 and 7 show a seven times magnification, magnified seven times the actual size of fractured strands of Rope No.1.

Figures 12, 13 and 14, show three strands of Rope No.2, all six figures, three on each -- three on

each Exhibit 39 and Exhibit 40 at the failed site show the nicking, the severe damage, the distortion, at the fracture end which I refer to, on which I base my conclusions, and also flattening of the outer wires;and particularly Figure 5 shows all three situations very nicely; a flattened area of the outerwires on the left-hand side, towards the bottom, which covers approximately six to seven wires of the strand, and also at the fracture end, severe distortion, nicking and flattening of the wires there.

Q Did you examine each and every strand of those wires ?

A Yes, I did.

Q Are those your findings with respect to each and every strand ?

A Yes. This is typical of what I observed.

Q And the photographs in your report, were they -- how did you choose those particular strands to show a photo enlargement, seven time enlargement ?

A As I stated yesterday, these were randomly selected by me, based on the ability of that particular strand to demonstrate the conditions that I saw in the wire rope, and also the ease in photographing the particular strand. It was irrelevant. I could have taken any one

of the eight. This is typical. I took three, or approximately 40 percent; I have showed here, out of the eight, three out of eight.

Q Would you refer to your photograph, one of these photographs, please, and point out to the Court just what you mean, and what your findings were and what you mean by "flattening, nicking," etc. Will you show us on these photographs. Which photograph are you referring to ?

A I'm referring to Figure 5, which I have identified through my report as designated from our field office in New Orleans as "Wire Rope No.1," which is referred to
29 in this courtroom as Exhibit 39. Flattening is shown on the wires to the left, to the underneath side of individual wires of this one strand which is one of eight which comprises the wire rope, and a flattening which would result from impact is shown here.

At the break end, there is severe notching of and nicking of the wires. These wires -- the wires I refer to -- are approximately .022 inches in diameter; and in many cases, the nicking extends directly through the wires and there is also flattening in this area.

This magnification is seven times the actual size, so in essence what we're looking at, the six inches

represented by this photograph is actually, approximately, in the neighborhood of five-eighths-of-an-inch. This is actually -- I'm sorry - about seven-eighths-of-an-inch. Seven-eighths. Seven-eighths-of-one-inch blown up seven times for observation.

Q Would you please mark on the photograph, with an arrow, and perhaps the designation F, areas of flattening ?

(Witness marked.)

Q You have similar photographs of other sections of other strands. I show you Figure 6. What were your observations in connection with that strand ?

30 A This Figure 6, which again is of the fracture end of Exhibit Wire Rope 39 shows severe nicking and distortion at the fracture site.

Q Is this another one of the strands of 39 --

A Yes.

Q --- in the area of the break ?

A Yes.

MR. DOTI: I don't want to take the Court's time to go through the same thing but --

Q Are there areas of flattening - could you at least designate one area of flattening for us ?

* * * *

32 On re-adjusting the two ends of the rope Kiste testified Ex. 40-1, 2 and 3, the exhibit measured 16 feet 8 inches to the breaking point and Exhibit 39-1, 2 and 3 16 feet 7 inches.

A It totals from the total of nine-feet-six inches plus the five feet that I cut out for tensile specimen. plus the two feet which represents the bitter end area, from the measurement of the cut to the loop, comes out to 16 feet-8 inches; which is one-inch difference than the measurement I received on Exhibit 39 with the total length of 39-1 through -4 of 16 feet-7 inches.

* * * *

34 THE COURT: Well, ask him. He's giving 16.8 inches in the case of Exhibit 39. When you gave the measurement of 16.8 inches, does that include 1, 2 and 3 only ?

A Yes, sir.

THE COURT: And not 39-4; just 39-1, 2 and 3 ?

A Yes.

* * * *

42 Q Mr. Kiste, I believe you previously described the type of damage you found at the point of fracture, and

is that the damage, the type of damage that you testified to in respect to the photographs that are attached to your

43 report --

A Yes.

Q --- and did you find the same type of damage in both Lykes Exhibits 39 and 40 ?

A Yes, I did.

Q Could you tell by your observation of that damage, the angle of impact to the wire; in other words, the angle that the impact to the wire caused these findings of yours ?

A Yes.

Q What would that be ?

A The impact was approximately horizontal to the vertical axis of the wire ropes.

Q Could you tell us how you determined that ?

A Yes, by the type of nicking and crushing evidence at the site of the fractures.

Q Did you make the same findings with respect to both 39 and 40 ?

A Yes.

Q You have been in the courtroom for the last several days, Mr. Kiste.

A Yes.

Q Did you hear the reading of the deposition of Mr. Welsh, the machinist leader man of Todd's ?

44 A Yes.

Q Do you recall, among other things, that he testified that various heavy objects were moved up and down through the shaft, through the elevator shaft on the NANCY LYKES ?

A Yes.

Q Do you recall that he testified as to the weights of those various objects, some as low perhaps as 40 pounds; and some, particularly the manifold, as high perhaps as 300 or maybe 380 if the bonnets were attached ?

A Yes.

Q I show you Lykes Exhibit 12, which is a photograph of such a manifold, removed or installed on the NANCY LYKES. Did you hear the testimony of the metallic construction of this manifold ?

A Yes.

Q My recollection is it was a heavy metal, steel or some alloy.

MR.HEALEY : Monel ?

MR. WYLY : I believe it was testified it was bronze.

Q In your opinion, Mr. Kiste, could the damage that you found to Wires 39 and 40 have been caused by impact from a metal-like object of the weight testified to in the deposition of Mr. Welsh, the manifold, of 300 or more pounds, and of the composition; could impact with such a metallic object have caused the damage that you observed to the wires ?

A Yes.

Q Is your answer that it could have ?

A Yes, it could have.

EXCERPTS FROM THE TESTIMONY OF JOHN P. PEULER
SEPTEMBER 30, 1975

2 Q Will you tell the Court your first connection with NANCY LYKES in reference to that matter ?

A Well, I was originally notified of the injury happening in Houston, and when the ship arrived in New Orleans I proceeded down to the Nashville Avenue wharf, where I was met by Mr. Thompson and one of our Port engineers came down with us, and we were there mainly for the purpose of performing an investigation and taking pictures
3 of the area, and having Mr. Thompson conduct a survey of the area to see exactly what had happened.

Q When you went aboard to the vicinity of the shaft, what if anything did you observe ?

A The shaft was closed with a padlock on the top.

THE COURT: Did you find the shaft padlocked ?

THE WITNESS: Yes.

* * * *

4 Q And were you also present when the cables were taken out of the shaft, at the conclusion of that day's investigations ?

A Yes, I was.

Q Will you tell us what was done in that connection ?

A We first disconnected the cables that were anchored where the break was. Then we proceeded to the drum and took the cable off of the drum, and some of the cable was down by the elevator. We put that all together and we removed all the cable. Then they proceeded to remove the elevator itself. And the way we did this, they ran a wire around underneath the elevator and lifted it up with one of the ship's booms.

Q I show you Lykes Exhibit 28, marked for identification; ask you if this is a fair representation of the movement picking up that platform while you were present ?

A Yes, it is.

Q You were present when this was being accomplished ?

A Yes.

MR. HEALEY : No objection.

(Lykes Exhibit 28 received in evidence.

Q Did you, Mr. Peuler, personally take charge of the cable ?

A Yes, I did.

Q And what did you do with it ?

A We immediately, after it was removed, we delivered it to Dixie Machine, and thereafter we took it from there in my custody to Lykes Bros. warehouse.

Q Where is the warehouse ?

A It is at 311 Nuns Street.

* * * *

8 Q Then the cables were transported to Dixie Machine first ?

A Right.

Q And then to Lykes warehouse ?

A Right.

Q Was anything done to the cables by Dixie Machine ?

MR. HEALEY : Now wait. I object.

MR. DOTI : If he knows.

MR. HEALEY : Fine.

Q If you know ?

A Yes, I do know. I was there. I had checked with one of our Marine Engineers regarding who could perform breaking strength test on these cables, and I was informed that Dixie Machine had the facilities and could perform such a test. So I went there, I talked

to the Manager of Dixie Machine. He was busy at the time and he assigned some of his men to cut this cable under my supervision into lengths sufficient enough for them to run breaking strength tests on it. And after we had this cable cut and the Manager came out, he realized that it was wire cable, and he said he didn't have the facilities for running tests on that, and he wouldn't be able to perform the test. So I then took the sections and brought them to our warehouse.

Q Now the sections that you brought, were they tagged in any way ?

A Yes, they were tagged at the time at Dixie Machine before they were cut.

Q Did those tags stay on them until you brought them to Pittsburgh ?

A Yes.

Q Did you bring the entire cable to Pittsburgh ?

A Yes, I did.

Q Personally ?

A Yes.

Q And you delivered them in the possession of Pittsburgh Testing Laboratories ?

A Right. In New Orleans.

* * * *

11 THE COURT: 28 was received. Then we are dealing now with 29, 30, 31 and 32.

Q Referring to Lykes Exhibit 29 for identification, there is a marking on that wall marked 11 foot 0 inches, is that correct ?

12 A Yes, there is.

MR. HEALEY: I object, your Honor. The photographs aren't in evidence at this point. We are going to have some connecting evidence before we start referring to them.

THE COURT: Maybe he is laying the groundwork for offering it now. I can't tell. There is a mark in the photograph.

Q Did you cause that to be marked on there ?

A Yes, I did.

Q Was an examination made at that time, or were photographs made by bosun's chair ?

A Right, by bosun's chair.

Q Who was in the bosun's chair ?

A The photographer, Mr. Hickenbotham.

Q Who made those marks on the wall ?

A Mr. Hickenbotham, the photographer.

Q Did you see him make that marking ?

A Yes, I did.

Q Do you know what 11- 0 was meant to indicate at the time ?

A That is 11 foot 0 inches from the coupling down the elevator shaft.

Q Was this drawn in chalk ?

A Yes, it was.

Q I show you a circle a few feet below on Lykes Exhibit 29 for identification. Is that a chalk circle also ?

A Yes, that is.

Q Did you see that chalked circle placed ?

A Yes, I did.

Q Do you know the reason that it was placed ?

A It was, in the initial photographs that we had taken, we noticed that, on closer examination of the pictures, we noticed that there was an indentation in the elevator shaft, and we felt that it needed further investigation, so I requested that Mr.Hickenbotham take these pictures, and to mark these particular spots, and to measure the spots to see how far they were exactly in the elevator shaft.

Q I show you Lykes Exhibit 30 for identification, and ask you if that is a photograph of the same chalk mark with 11 - O after it.

A Yes, it is.

Q And this picture was also taken at your direction and in your presence ?

A Right.

Q Is this the same circle that you just referred to ?

A Right. And this begins to show another circle a little further down also.

* * * *

Q And Exhibit 30, the lower one is rather dark. I don't know how well you can see that, but ---

A You can't see the mark in the lower one. You can see the circle. But you can see the mark in the upper one.

Q Can you identify the upper one ?

A Yes, it is the same.

* * * *

CROSS - October 1, 1975

Q Do you know of any difficulties with the engineer lift platform riding out of the shaft on any of the Gulf Pride ships that you handled ?

A No, I'm not.

---

26 Q All right. When did you receive notification of the accident ?

A Within an hour, an hour and a half after it occurred.

Q All right. Then you said you did give orders

27 to seal that hatch ?

A Yes, I did.

Q Did you give specific orders that nothing was to be altered ?

A Exactly.

Q All right.

And when you arrived five days later on the NANCY LYKES was the hatch still sealed ?

A Yes, it was.

Q So does this picture show, as far as you know, the exact condition of whatever shows in that photograph as it existed at the time of the accident ?

A Yes.

Q There were no alterations made as far as you know ?

A As far as I know, unless Mr. Brierly did anything.

Q Who is he ?

A Mr. Brierly was the surveyor that examined this area.

Q Russel Brierly ?

A Right.

Q Okay, fine, I think he has testified and if I recall, he has indicated he has altered nothing.

* * * *

45 Q Just before the accident occurred, Mr. Imanuel, as you know, was standing on the platform up at the weather deck level, correct ?

A Right.

Q Now, when you went aboard it was five days

46 later, right ?

A Right.

Q Had anything passed violently down that shaft from the time poor Mr. Imanuel was left standing on that platform until you came on board the ship on December 15th ?

A I can't say definitely. I assume no because it was locked.

Q Well, let me ask you this: Didn't the platform itself fall freely all the way down the shaft ?

A It fell down the shaft. I don't think it fell freely; the guides were on the rail.

Q Were the cables still on it ?

A No.

Q And you did find that there was some other kind of cable in that shaft that you are still not able to tell us what it was, right ?

A Right.

Q And when you saw the undercarriage after the fall, it was quite distorted, wasn't it ?

A Yes.

* * * *

61 Q How long did Dixie keep possession of the cable ?

A I'm not sure. I believe about two or three days. But I'm not sure.

Q All right.

During that two or three day period, you had mentioned yesterday there was some suggestion that they run a tension or breaking point test on the wire.

A Right.

Q They said they would ?

A Right.

Q Do you know whether they did anything in an attempt to follow up that undertaking ? Don't tell me what the man told you yet.

Do you know whether they did anything ?

A Yes.

62 Q I want to know if Dixie did anything with the cable when they started to undertake these tension tests ?

A Yes.

Q What did they do with the cable ?

A They ---

Q Did you see it or were you told it ?

A No, I saw it. I was there.

Q What did they do ?

A The two anchored ends of the cable, the two anchored cables were kept by me in my possession.

Q Wait. Clarify that for me now.

A In other words, I was there. They stretched the cable out the length of their shop. The two ends that were anchored were held by me in my hand so they wouldn't fool with them. The other parts of the cable, they went along and cut it in approximately, I think, 12, 13 foot sections or something, and again they stayed away from the opposite end where the break was, and they cut it, I don't remember how many pieces but they cut it in some pieces in order to run the test.

Q Then what happened ?

A Then the manager came out, found they couldn't run the test on it, and we bundled it up and I took it.

Q They cut your cable all up and then said we

63 can't do anything to help you, is that right ?

A Right.

Q Who recommended to you that you use Dixie for this type of work ?

A One of our port engineers.

Q Is he still with you ?

A Yes.

Q Then what happened to the cable ?

A Then I took the cable with me and delivered it to our warehouse.

Q Okay. How long was it kept in your warehouse ?

A I don't remember.

Q How and where was it kept in your warehouse, do you know ?

A It was kept in a wooden box, covered wooden box, on the floor.

Q Was it regularly maintained, preserved, greased, oiled, fish oiled ?

A No, no grease and fish oil. The ends were coated with wax if I can remember correctly.

Q Who was the next custodian of this cable, Pittsburgh ?

A Pittsburgh.

Q When was it sent to Pittsburgh ?

64 A I don't remember the exact date.

Q Well, Pittsburgh has what, their test is in '73 sometime, I believe, is that correct ?

A I don't remember.

MR. DOTI: The report is dated May 24, '73 I don't know when they received it.

Q That is what I was going to ask you, May 24, '73 Pittsburgh submitted a report. Do you know how much before that date you sent the cable to them ?

A No, I don't. I delivered it to Pittsburgh's New Orleans office.

* * * *

65 BY THE COURT:

Q Mr. Peuler, if I understand correctly, you testified in answer to Mr. Doti's questions that you kept this hatch under seal and that you assumed that the conditions were the same when you went there on December 15th since it had remained under seal.

A Right.

Q Since you ordered it to be sealed and I understand you did that one hour after the accident, is that correct ?

A Right. Well, immediately after the first survey was done in Texas.

Q Well, I'm puzzled now, because my next question was to ask you whether the seal wasn't broken when the survey of Mr. Brierly took place.

A Well, by sealed I meant locked. It was locked immediately after the accident. Then it was opened for Mr. Brierly, but our office over there was given instructions
66 that Mr. Brierly is not to disturb the platform and not to disturb anything in the shaft because the full investigation was going to be done in New Orleans and after his examination it was again locked.

Q Now, who was present when Mr. Brierly made his examination ?

A I'm not sure really.

Q Was there any reason why you weren't there when Mr. Brierly made his examination ?

A Well, that was in Texas, and I was in New Orleans at the time. If I'm not mistaken our attorneys in either Houston or Galveston were with Mr. Brierly.

Q When did you get Mr. Brierly's report ?

A I don't remember, but I believe it was about a week or ten days after he examined it.

Q Was it after December 15th ?

A I'm almost sure it was, yes. In fact, if I'm not mistaken, Mr. Brierly sent his report to our attorneys in Texas and they in turn forwarded it to us in which case it would be after the 15th.

* * * *

68 MR. DOTI: Just to clarify a point that the Court raised.

Mr. Brierly's report was dated December 15th, your Honor, which would be about five days after his examination.

THE COURT: Yes.

REDIRECT

68 Q When you were examining the shaft, what was your principal attention directed to ?

A The rail.

---

69 THE WITNESS: Personally, I didn't know how. I didn't know what had happened in the case. When I went out there, I didn't have any idea at all on how that elevator fell.

THE COURT: You knew that he was standing on this platform, and that the platform fell with him on it ?

THE WITNESS: Right.

THE COURT : And was the cause of his injuries ?

THE WITNESS: Right.

THE COURT : Did you think you had a defense under the Jones Act ?

THE WITNESS: My first idea on the case was that the cables may not have been, may not have had sufficient breaking strength, that the cables may have been weak, and that was my first idea in the case, on why this thing had fallen.

THE COURT : But you were seriously engaged in trying to determine whether or not Lykes had a defense to Imanuel's suit under the Jones Act ?

THE WITNESS: I figured we didn't have much of a defense. I was mainly looking for some type of contributory negligence.

THE COURT : And possibly a claim against Todd ?

70 THE WITNESS: Todd didn't really enter my mind until later on.

THE COURT: How much later ?

THE WITNESS: Well, after, during the investigation, I started to check them on what work had been done on this and everything, and then I found out the ship had just recently come out of the shipyard and had been worked on by Todd.

Then I began to dig further into it and I found out that Todd had apparently moved equipment through the elevator shaft, and that is when it really started, where I really started getting the idea. I'd say probably it was about a year later, ten months to a year later.

REDIRECT - OCTOBER 1, 1975

9 Q Before we leave the subject of these marks, Mr. Peuler, when you examined them, the two marks that are described or let s say depicted in these four exhibits, Lykes 29, 30, 31 and 32, and Lykes Exhibit 7, when you examined those marks on December 15, 1971, where were you standing ?

A I was standing in the machine shop directly behind the drum.

Q At what distance would you have been from those marks?

A Between 5 and 6 feet.

Q Looking across the shaft at the marks ?

A Right.

Q Was the shaft illuminated at the time ?

A Yes, it was.

Q How was it illuminated ?

A Two to three cluster lights were rigged above the shaft shining directly down into the shaft and it was still daylight.

Q Would you describe for the Court what you saw in respect of this, let's say the two marks, if they were the same -- rather than that, would you direct your attention to the first mark below the 11 foot line.

Would you tell us what you recall of the appearance of that mark ?

A That was on December the 15th ?

Q On December 15th.

A The first mark was approximately 3 to 4 inches long. It was located approximately 6 inches I'd say from the corner of the shaft. It was an indentation into the metal of the shaft, and it was shiny and appeared to be a mark that was recently made.

Q Were there any indications of rust on that mark ?

A No, there wasn't. There may have been very

slight traces, but nothing, nothing much. It did appear to be a fresh mark that had just been made recently.

Q And the second mark that you examined, the ones that you circled below, what were your observations in that respect ?

A The second mark was out a little bit further from the corner, maybe 6-1/2 to 7 inches. It was also about 3 inches long and was an indentation into the metal and the second mark, again, appeared to be shiny and appeared to have been made recently.

EXHIBIT 21

EXCERPTS FROM DEPOSITION OF JAMES WILLIAM WOLFE

3 Q Mr. Wolfe, what is your full name ?

A James William.

Q And what is your occupation ?

A Machinist leaderman, outside machinist.

Q By whom are you employed ?

A Todd Shipyard Corporation, Galveston Division.

Q How long have you been employed by Todd ?

A Approximately 23 years this last time.

4 Q And you are now a leaderman ?

A Leaderman.

Q What is a leaderman ?

What are your duties as a leaderman ?

A We take job assignments, machinist department aboard ships or shop, go down to the yard, various repair or maintenance.

Q Are you a foreman on the job ?

A No, sir, a leaderman, that is our title.

Q Did you do any work on the NANCY LYKES ?

A I said, no knowledge of it.

Q Do you mean, you don't remember whether you

worked on it or not ?

A No, sir.

Q Do you know what work was done on the NANCY LYKES ?

A It was one of our conversions.

Q What do you mean by conversion ?

A They was cutting additional section to put in it.

Q Was that all ?

A To my knowledge, that was my extent of the knowledge of this particular ship.

Q How many Lykes ships did you work on in the year 1971 ?

A I couldn't say that.

Q Did you work on any ?

A Well, I couldn't say definitely, no. I have no -- no -- no record of them.

Q .....no memory ?

A I have a memory, yes, sir.

Q No memory of working on the NANCY LYKES ?

A No, sir.

* * *

9 Q I'm talking about the year 1971 when she was in the yard being converted and lengthened, you worked on the NANCY LYKES, you say, many times ?

A I said, I couldn't state during those dates, I could not say this.

Q You could not say that ?

A No, sir.

* * *

11 MR.BOAL: I ask to have this original statement of James Wolfe, Sr., dated June 18th, 1974, consisting of one, two, three and four pages, typewritten and signed --

11 MR. HEALEY: (interrupting) Handwritten.

MR.BOAL: ... handwritten, I mean, and signed James W. Wolfe, Sr.

MR. HEALEY: Is that your signature on there, Mr. Wolfe ? Take a look, take a look and see, if you got your signature on there.

THE WITNESS: Yes, sir.

MR. DOTI : This isn't on the record.

(Discussion off the record)

MR.BOAL : The statement, in addition thereto, dated January 11th, 1975 (sic).

MR. DOTI : A typewritten copy of the same statement with additional thereto, dated January 11th.

MR. HEALEY : That's in script ?

MR. DOTI : In script.

MR. HEALEY : Is your signature on the bottom of that ?

THE WITNESS: Yes, sir.

* * *

Q (By Mr. Boal) Mr. Wolfe, are the statements you made in this statement, plus the addition thereto, which is marked Wolfe 2, March 25, '75, for identification, correct ?

MR. HEALEY: Here, I got a copy, look at this.

A Yes, sir.

---

13 Q (By Mr.Boal) Mr. Wolfe, when the NANCY LYKES was afloat, was she alongside a pier ?

A Yes, sir, I would think so.

Q And was the crane operating along her ?

A Yes, sir.

Q Just one crane or more than one ?

A It would depend on time.

Q And there was an operator on the crane ?

A Always, yes, sir.

Q And that crane was used to lower things into the NANCY LYKES and raise things out of the NANCY LYKES ?

A That's right, yes, sir.

* * *

18 Q On these ships, was it customary to use the elevator shaft to lower things into and removing them from the engineroom from time to time ?

A I wouldn't say it was customary, no.

Q Was it done from time to time ?

A It was done from time to time.

Q It was done on the NANCY LYKES.

A I can't state that.

Q Well, is it you don't remember or --

A I do not remember.

Q You make a statement here, "We did use the elevator shaft for the benefit of Todd's crane to remove and lower materials and equipment out of the engineroom throughout the conversion of the NANCY LYKES."

That statement is correct, is it ?

A Would you read that again, sir ?

MR. HEALEY : I can show it to you.

THE WITNESS: All right.

MR. HEALEY : Here.

THE WITNESS: I don't follow his question, sir.

Q (By Mr. Boal) What's the answer ?

MR. HEALEY : He said he didn't follow the question.

A I didn't follow your question.

MR. BOAL: Will you read my question.

(Whereupon the question was read as follows: "Question: You make a statement here, 'We did use the elevator shaft

for the benefit of Todd's crane to remove and lower materials and equipment out of the engineroom throughout the conversion of the NANCY LYKES.'")

A Not the NANCY LYKES. I have stated I have no -- I couldn't state the NANCY LYKES (sic).

* * *

REDIRECT

50 Q You were furnished with a copy of this statement ?

A Yes, sir, I was.

Q You signed this original statement on each page, didn't you ?

A Yes, sir, to the best of my knowledge.

Q And you read it over before you signed it ?

A Yes, sir.

Q You read it over carefully ?

And when Mr. Rhodes saw you, you read it over again, didn't you ?

A That's right, yes, sir.

Q And you signed the addenda which appears on this statement --

A Yes, sir.

Q ---which is Wolfe Exhibit 2 for identifcation ?

A Yes, sir.

* * *

51 Q (By Mr. Boal) You read over this statement, you signed at the end, didn't you ?

MR. HEALEY: He said he did, Mr. Boal.

MR. BOAL : Yes, sir.

I have no further questions.

MR. DOTI: I just have one or two. This was taken at your --

Mr. HEALEY: Before we go on, I don't think we should go back and forth, have two examiners.

Q (By Mr. Boal) Now this addenda to the statement was signed in your own home ?

A Yes, sir.

Q . . . you were at leisure at this time ?

A Usually -- yes, sir.

Q Anybody put any pressure on you to sign this statement either time ?

A Not hardly, no, sir.

COPY OF EXHIBIT 21 A

Statement of James Wolfe, Sr.
June 18, 1974

My name is James Wolfe, Sr. age 48, occupation machinist leaderman, employed by the Todd Galveston Drydocks, Galveston, Texas. I have been employed with this concern for approximately twenty-five years.

I am married and reside at 4410 Edmond, telephone 938-0988, Texas City, Texas.

I recall the vessel Nancy Lykes. In fact, I have worked on this ship many times during my employment at Todds.

I remember Todds converted the Nancy Lykes for containers as well as lengthening the vessel. I do not recall just when the conversion took place. Todds converted about eleven Lykes' ships.

I do not remember when the conversion actually was completely on the Nancy Lykes. Nevertheless, to the best of my knowledge, none of the ships crew was aboard the vessel during conversion. To the best of my knowledge, an electric elevator is located in the number four hatch extending from the weather deck to the lower engine room.

There is a feed pump suction manifold located on the port side of the lower engine room. I don't recall removing and reinstating this manifold during the conversion of the Nancy Lykes, although we could have.

Todd employees could not use the elevator during conversion for safety precautions. On the other hand, the elevator shaft was used as an access passage for lowering and raising materials to the lower engine room throughout the conversion.

Todd Shipyards furnishes a crane to lower and remove the materials out of the elevator shaft. Todd employs a number of crane operators. The elevator shaft was over four feet square.

Todd also employs a number of supervisors. The Todd supervisors would stand on the main deck of the vessel looking down into the elevator shaft and supervise the operations.

As stated previously, while the vessel Nancy Lykes, was at Todds during conversion, I don't recall removing the feed pump suction manifold, although we could have.

As stated previously, we did not use the electric elevator, which to the best of my knowledge is located in the number four hatch. On the other hand, we did use the elevator shaft with the benefit of Todds crane to remove and lower materials and equipment out of the engine room throughout the conversion of the Nancy Lykes.

As per my request, this statement of 3 1/2 pages has been read to me and the facts are true and correct to the best of my knowledge.

As per my request, a copy of this 3 1/2 page signed statement has been left in my possession.

L. James W. Wolfe, Sr.

TEXAS CITY, TEXAS
January 11, 1975

I am James W. Wolfe, Sr. I made the above statement on June 18, 1974. I have read this copy of the statement again today. It is true and correct with the exception of one thing. We would not necessarily have one of the supervisors flagging the crane. The flagman will be a competent flagman, but not necessarily a supervisor. The flagman would be a Todd's employee standing where he could direct the crane operator.

We always use the elevator shaft on those ships. It gives access to the engine room. That is normal procedure. We did not use the elevator platform itself, except with specific permission.

I have read this statement. It is true and correct. I will so swear in any competent court of law.

J.W.WOLFE, SR.

WITNESS: DONALD RHODES
D.R.Redding & Associates
300 Jackson Hill
Houston, Texas 17007

EXHIBIT 22

EXCERPTS FROM DEPOSITION OF MR. ONTIVEROUS

3 Q Mr. Ontiverous, where do you live ?

A 806 Avenue H in Galveston, Texas.

Q What is your occupation ?

A Outside machinist for Todds.

Q How long have you worked for Todds ?

A Oh, about 27 years.

Q What are your duties as an outside machinist ?

A Well, work on turbines, valves, boilers.

Q .... work in the engineroom ?

A In the engineroom.

Q Did you work on the NANCY LYKES when she was at Todd Shipyard being converted in 1971 ?

A I don't recall working on it.

Q You say you didn't work on it or you don't remember working on it ?

A I say, I didn't recall.

Q Don't recall what ?

4 A Working on the NANCY LYKES.

* * *

5 Q Do you recall the names of any of the ships on which you worked in 1971 ?

A No.

* * *

Q (By Mr. Boal) Do you have any recollection of any work on any particular ship during 1971 ?

A I have worked on turbines but I can't recollect any ship. I can't remember the names.

Q Do you remember signing a statement for Mr. Murph on June 14th, 1974 ?

A Yes, sir.

Q Where did you sign it ?

A At my home.

Q Were you interviewed by Mr. Murph at your home at that time ?

A Yes, sir.

Q And you read over the statement ?

A I read it -- when he read it, he read it to me, and then I read it myself.

Q And you signed it and he gave you a copy of it, did he ?

A Yes, sir.

Q I show you a document consisting of four long-hand -- four pages written in longhand and ask you if that's a statement which you signed on the date indicated, June 14th, 1974.

MR. HEALEY: Take a look at it.

MR. BOAL : Here's a copy.

MR. HEALEY: Mr. Boal, I think he's going to answer.

Q (By Mr. Boal) Is that statement signed by you ?

A Yes, sir.

Q ... each page is signed by you ?

A Yes, sir.

Q And it was signed by you in your home ?

A At my home.

Q ... on June 14th, 1974 ?

A Yes, sir.

Q And you read it over before you signed it ?

A Yes, sir.

Q And you were furnished with a copy of it ?

A Yes, sir.

* * *

Q (By Mr. Boal) Does reading this statement refresh your recollection as to working on the NANCY LYKES ?

A I don't recall.

Q Do you recall being on the NANCY LYKES at any time ?

A I don't recall that either.

EXHIBIT 22-A

Galveston, Texas

June 14, 1974

STATEMENT OF IGNACIO ONTIVEROUS:

My name is Ignacio Ontiverous, age 53, occupation machinist employed by the Todd Galveston Drydocks, Galveston, Texas. I have been employed with this concern for approximately twenty-seven years.

I am married and reside at 806 Avenue H, telephone 762-3576, Galveston, Texas.

I recall the vessel NANCY LYKES. I have worked on this ship many times while it was berthed at the Galveston drydock.

In the year of 1971, the vessel NANCY LYKES was at Todds for a major conversion. I do not recall the exact months in 1971. The ship was lengthened as well as converted for containers. I can't remember when the conversion was actually completed.

When the vessel was being converted none of the ship's crew, licensed or unlicensed were present.

I recall an electric elevator was located in the number five hatch extending from the weather deck to the lower engine room. I recall there was no power on the vessel, only shore power. With this in mind, we did not use this elevator during conversion.

The elevator shaft was approximately four feet by four feet. Since the electric elevator was not operative, we had to use this elevator shaft to lower and raise materials to the engine rooms, both lower and upper.

Normally I work on turbines and generators. These generators and turbines are located in the upper engine room. I recall working in the upper engine room during conversion, but not the lower engine room. The feed pump suction manifold is located in the lower engine room. A manifold would weigh approximately 200 pounds depending on the valves between three to six feet in length.

Since I did not work on this manifold during conversion I would not know the exact length. This manifold could of been removed and reinstalled by Todd employees, I don't know. Nevertheless I do recall we used the elevator shaft located in the number five hatch for lowering and raising materials.

A crane is used to lower and raise materials through this elevator shaft. The crane is owned and operated by the Todd Drydock and employees. Todd employs five or six crane operators.

There are about four supervisors at Todds. With this in mind, I don't know which supervisor was on the main deck of the vessel looking down into the elevator shaft, supervising operations.

As stated previously, we did not use the electric elevator situated in the number five hatch during conversion of the NANCY LYKES in the year of 1971. On the other hand we did use the elevator shaft with the benefit of Todd's crane. This elevator shaft was used strictly as an access passage for lowering and removing equipment.

As per my request, this statement of four pages has been read to me and the facts are true and correct to the best of my knowledge. A copy of this 4 page signed statement has been left in my possession.

(signed) Ignacio Ontiverous

EXCERPTS FROM TESTIMONY OF JOSEPH DiCOCCO

October 3, 1975

DIRECT

10 Q Now, these are -- what you have told me -- dependent upon electrical principles for their operation; is that correct ?

A Correct.

Q The ones you've recited to us ?

A Yes.

Q Are they, all of those seven or eight safety features that control the movement of your platform, are they on a single circuit or a single series ?

A It's all one circuit and --

Q All right. If one of those, just one of those safety features is tripped, will the machine operate ?

A That is what I was going to say. If any one of that line is broken, the machine does not operate.

* * * *

13 Q In addition to those safety features, we have heard testimony about a broken rope brake, I think is the term. Are you familiar with that ?

A I know what you are talking about. It's not called a brake; it's called a broken rope safety.

14 Q Is that a mechanical or electrical device ?

A It's strictly mechanical.

Q Tell us generally -- let me ask you this to save time; is there some kind of spring-fed lever which, if not held in by tense cables, will be activated and then cause eccentric cogs to engage the rail, to stop a car ?

A That is exactly how it works, sir.

* * * *

15 Q What type of maintenance is required to maintain the broken rope safety in its intended operating condition ?

16 A Lubrication, make sure there is no rust accumulation on it, trash or debris. Make sure that it could be moved actually by hand. If it moves by hand, it will be moved by a broken rope.

* * * *

30 THE COURT: You mean the switch can be tested from the place where the motor is ?

A Every switch in the shaft can be tested from where the motor is.

THE COURT: There is no necessity to go either to the top or to the bottom ?

A That's right, to find out whether it is functioning or not.

THE COURT: Suppose there is something wrong with it ?

A Then, you find a means to get to the switch. If you find that the switch is open, you find another means to get to the switch other than to ride the platform, because there is nothing to stop you as long as that safety circuit is jumped out.

Q To follow that up, assuming now you do discover from your readout in the motor room that the uppermost safety switches, limit switches, are not working, all right

A All right

31 Q --- you have to go to the switch now to look it over, see if you can find the difficulty, is that correct ?

A Correct.

Q If I understood your testimony then, you don't get on that platform while you still have a bum limit switch, is that right ?

A By no means.

Q You find some other means ?

A That's right.

Q Is a bosun's chair one acceptable other means to get to the limit switch ?

A In this particular case, yes.

Q That is accepted and good industry practice, go down in some other means, rather than the platform, to make repairs on a known defective switch, is that right ?

A Well, to begin with, if the limit switch is defective, the elevator will not operate automatically. In other words, to let it function other than automatically, you are eliminating a safety switch. As soon as you eliminate a safety switch, you are taking your life in the hands of that safety switch or whatever, somebody else's, you are eliminating a thing to make it run.

Q What you are telling me, with a defective limit switch, that entire circuit of seven safety devices is

32 opened ?

A That's right, it is open; it won't function.

Q So that machine won't function ?

A That's right.

Q So as a practical matter, you couldn't even get down there on your platform because it won't run now ?

A Like I said before, the only way to do it is to eliminate it.

Q That is what we have said. You have to eliminate every safety because they're on the one.

A All on the one line.

Q All right. That is why you should use other means, the bosun's chair, whatever is available to you ?

A Exactly.

* * * *

CROSS

64 Q Have you ever tested an elevator or its motor or its operation by using a jump wire ?

A Yes.

Q Under what circumstances ?

A Under what circumstances ? Well, to get a --- well, I don't know how to explain it. As an example, if it's an upper limit switch that is not working, that is not functioning, I prove it with an ohmeter on the control panel that it's the upper limit switch that is not functioning. In order for me to get on top of that car, rather than push a relay in physically, I will jump out the upper relay, bring it down to a point where I may climb on top of the car, or get the car out of the way, use a ladder or some other means to get to that limit switch, disconnect the power, climb to the limit switch and work on it, what has to be done.

Q I believe you included in your methods, getting on the car ?

A After the power is thrown off.

Q Well, do you have any knowledge that the power

65 was on when Mr. Imanuel was in the car in this case ?

A Oh, I don't know. I don't know.

* * * *

71 Q You mentioned that you could test the upper limit switch completely from the motor room.

A Yes, sir -- control, from the control panel.

Q From the control panel. And the panel could show you that the switch was operative or inoperative, is that right ?

A That is right, either way.

Q By your --

A Meters.

Q By your meters ?

Supposing that your meter showed that the switch was operative. In other words, that would mean it was closed ?

A Correct.

Q At the upper limit, it was closed on the shaft ?

A That's right.

Q And then the platform would come up, the platform would contact it and open it up ?

A Correct.

Q And that would break the relay ?

A It would break the limit switch.

Q Could you tell from your position in the motor

72 room whether that relay, whether that switch was rusted shut or frozen shut in some way ?

A No.

* * * *

93 Q And if these sheaves were frozen or rusted and did not turn, could the wire rope, nevertheless, be pulled across the sheaves ?

94 A Yes.

Q Would that action of the wire rope across the sheaves meet with some resistance because the sheaves did not turn ?

A Definitely.

Q Would you expect to see signs of that resistance on the wire rope in the form of perhaps shine, as you mentioned before ?

A Yes, that would be a sign.

Q And if an elevator car came all the way up and down a shaft, one or two times under those circumstances, would you expect to see such signs on a large portion of the wire rope ?

BEST COPY AVAILABLE

A It's possible, and it's possible that it won't show any in only two trips. It may not show any sign on two trips. It may take five or six trips. We don't know. Depending on the lubrication that is on the cable. If there is a lot of lubrication, you have to wear through the lubrication, into the cable, wear the blueing or whatever you want to call it, off of the cable into a shine, so it may take more than one or two trips to bring the shine out.

Q Are you saying that perhaps the sheaves might be stationary under certain circumstances and then move other

95 times ?

A No, no. I'm saying nothing of the kind. What I'm saying is that it may take more than one trip to get a shine on a cable and then again one trip may not show any shine; it may take five, six, eight trips for that shine to show on the cable. We don't know. I don't have that kind of experience to say that is what it takes to make a shine on a cable.

* * * *

97 Q So when the current is applied by pressing the screwdriver, the brake is activated, and the tension is relieved, is that right, so that the car can move ?

Q When the contact is driven in by a screwdriver, electricity is applied to the motor and the brake at the

same time; unless the motor gets power, neither does the brake.

Q And I think you testified before that the power that went to the motor was the same whether you did this by the screwdriver or by pushing a button or by using a jumper wire ?

A That's correct.

Q Is the power supplied to the brake the same under those three conditions ?

A Yes.

Q And would the action of the brake be the same under each condition ?

A Yes.

EXHIBIT #8 - TWO SHEETS - CARE AND MAINTENANCE OF THE ELEVATOR

CARE AND MAINTENANCE	ENGINEERS PLATFORM HOIST

1. Be sure to open main line disconnect switch ahead of the motor and controller before attempting any repairs or adjustments.

2. After each 250 hours of operation, or once each month, go over entire installation to be sure all bolts, connections and fittings are tight and that sufficient running clearances are being maintained.

3. GUIDES. Guide surfaces of guides should be painted with an ENERGY Lubricant #10 or mixture of powdered graphite and machine oil every 250 hours of operation, or sooner if guides become dry.

4. CABLES. Cables and the Grooves of the driving drum on the machine should be kept clean. Examine cable for broken wires every six months. Cable should be discarded when there are six broken wires in a rope lay.

5. IDLER SHEAVE. Is fitted with an oil impregnated bronze bearing. The oil supply in these bearings should be added to by putting several drops of good grade Engine Oil, heated to 140 degrees F., in each sheave oil cup after each 250 hours of operation, or once a month.

6. CAR SHEAVES. Car sheaves are supported by ball bearings, self aligning pillow blocks. These bearings have been pre-lubricated with a grease chosen for chemical and mechanical stability. These bearings must be lubricated by grease not oil. Re-lubrication of these units should be made every 250 hours of operation or sooner if required. Bearing should be re-lubricated while in operation wherever possible. Grease should be pumped in slowly until a slight bead forms around the seals. This indicates that the bearing is filled to capacity. If necessary to re-lubricate while the bearing is idle the capacity of the bearing grease chamber is 3/8 of an ounce.

7. MOTOR. Keep motor dry and clean. Blow dust from motor windings - each 2000 hours of operation or once a year. For additional motor information see Master Electric Company - Page 1 - Data #63278M.

8. MACHINE. Do not start motor until gear case is filled with oil. Remove plug and replace with threaded adapter. Insert bayonet oil gauge which also acts as a vent. With motor stopped, oil level must be maintained between high and low marks on bayonet gauge. Drain and flush gear case after each 750 hours of operation or after each 500 hours, if operated continuously or if oil temperature during operation exceeds 200° f. Refill with one of the approved lubricants see Master data "Operating Instructions - Page 2, #63278-M." Heating is a natural characteristic of worm gear units and a maximum temperature of 200° F. is not uncommon.

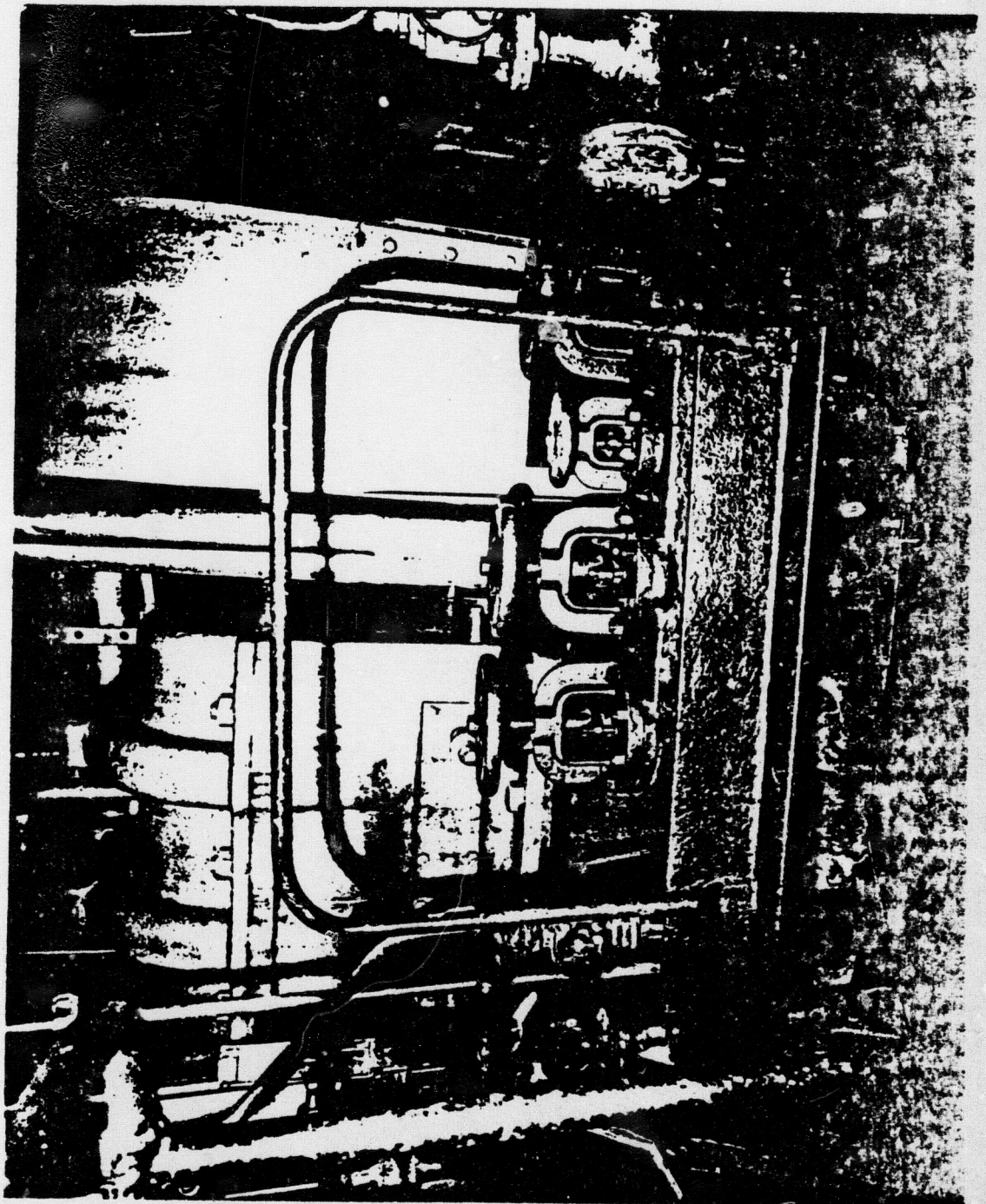
9. BRAKE. See Master data #18190-B. Master Type M Unibrake Motors for lubrication and maintenance instructions.

EXHIBIT #8 - TWO SHEETS - CARE AND MAINTENANCE OF THE ELEVATOR

10. CONTROLLER. Keep controller dry and clean. Refer to manufacturers publication in this manual for care, adjustment and renewal parts.

NOTE: Always give manufacturer's contract number 62801/4 when writing concerning any renewal part.

EXHIBIT #12 - PHOTOGRAPH OF MANIFOLD



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#27

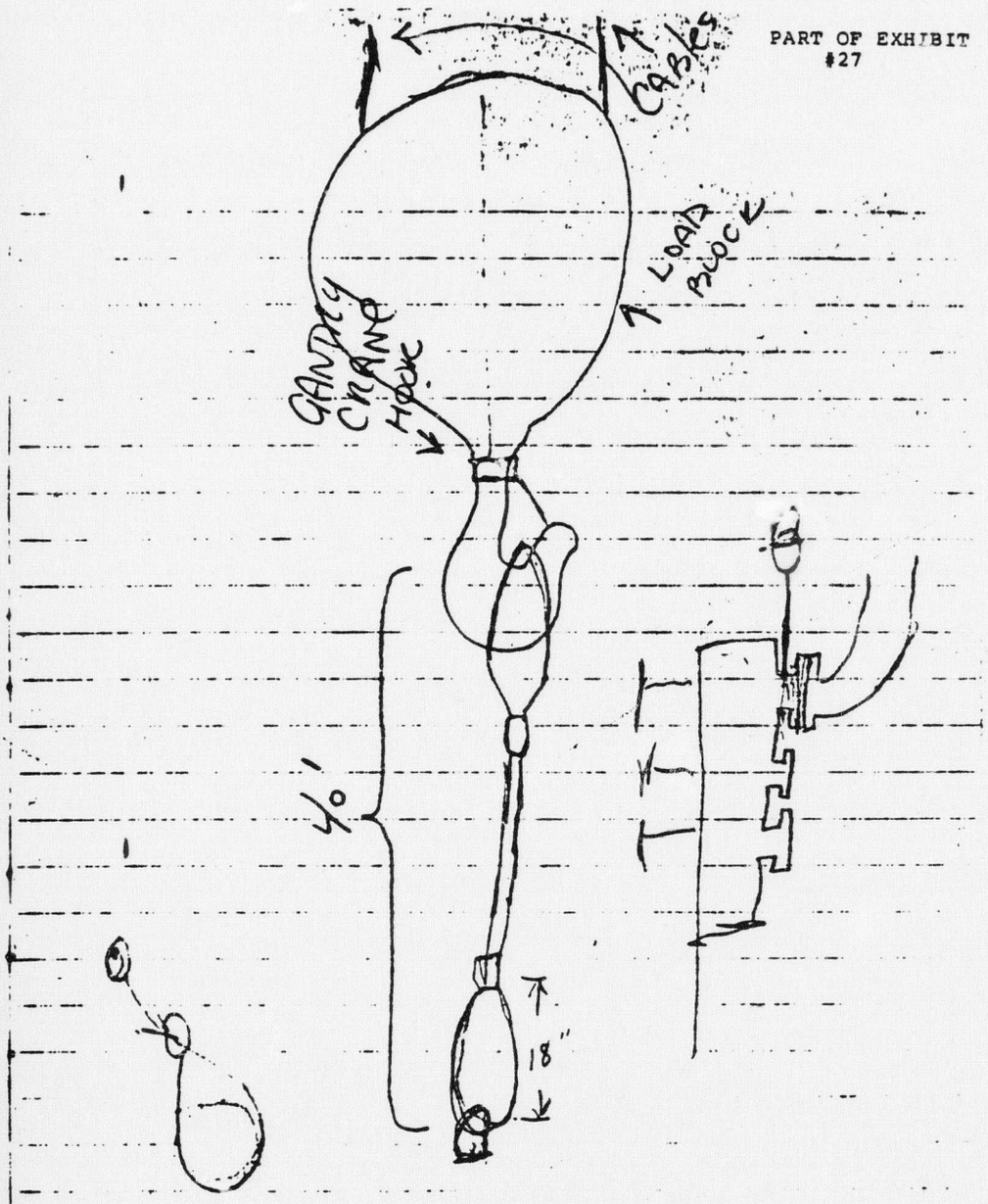

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EXHIBIT #30 - PHOTOGRAPH

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31

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EXHIBIT #31 - PHOTOGRAPH

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EXHIBIT #32 - PHOTOGRAPH

EXHIBIT #38 - PITTSBURGH TESTING LABORATORY REPORT

(REPRODUCED HEREIN AT PAGES 289a TO 309a)

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LABORATORY No. 734872

LIENT'S No.

ORDER No. NO-1210

REPORT

May 24, 1973

REPORT OF: Metallurgical Examination Of 5/16 Inch Diameter Wire Rope Failures

REFERENCE: X-S/S "Nancy Lykes"

REPORT FOR: Lykes Bros. Steamship Co., Inc.
300 Poydras Street - Lykes Center
New Orleans, Louisiana 70130

ATTENTION: Mr. N. J. Rizzo

Two (2) fractured 5/16 inch diameter wire ripe failures were submitted to this laboratory to determine the cause of the failures. We were told that the wire ropes were used as elevator wire rope.

Sixteen (16) sections of wire rope were marked and submitted for the following purposes:

Failure Examination

Wire Rope No. 1 (2 Sections) - Top fractured end (red tag-piece No. 1) and mating bottom fracture end (white tag-piece No. 1).

Wire Rope No. 2 (2 Sections) - Top fracture end (red tag-piece No. 2) and mating bottom fracture end (white tag-piece No. 2).

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Breaking Strength Tests

	Test No.	Section	Approximate Length (feet)
Wire Rope No. 1	1	1st End	9
	2	Center	9
	3	2nd End	9
	4	From Top Fracture	12
	5	From Bottom Fracture	9-1/2
Wire Rope No. 2	6	1st End	9
	7	Center	9
	8	2nd End	9
	9	From Top Fracture	12-1/2
	10	From Bottom Fracture	9-1/2

Hold Only

Piece No. 1 - 2nd end, approximately 16 feet long
Piece No. 2 - 1st end, approximately 16 feet long

Surplus Only

4 Sections - No Mark - Use only if needed, 18 feet to 30 feet in length

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CLIENT'S No.

LABORATORY No. 734872

ORDER No. NO-1210

REPORT

May 24, 1973

VISUAL AND STEREO-MICROSCOPIC EXAMINATION:

The 5/16 inch diameter wire rope had the following characteristics:

1. Wire rope diameter (by caliper) - .323" (21/64")
2. Number of strands - 8
3. Number and nominal diameter of wires per strand:
   A. Outer Layer - 9 at .022"
   B. Inner Layer - 9 at .012"
   C. Core Wire - .027"
4. Class 8 x 19
5. Construction 8 x 19 Seale
6. Type core - fiber
7. Lay - right regular. Lay length - 2"
8. Not galvanized
9. Preform

Figures 1 and 2 show the top and bottom fractured sections, respectively, of the No. 1 5/16 inch wire rope failure as recived by this laboratory.

Figures 3 and 4 show the top and bottom fractured strand ends, respectively, of the No. 1 wire rope failure.

Figures 5, 6 and 7 show the close-up of the 1st, 4th and 6th wire strand fractured ends, counting from the top in Figure 4, of wire rope failure No. 1.

Figures 8 and 9 show the top and bottom fractured sections, respectively, of the No. 2 5/16 inch wire rope failure, as received by this laboratory. The distance from the "kinked" ends, where the

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LABORATORY No. 734872

CLIENT'S No.

ORDER No. NO-1210

REPORT

May 24, 1973

wire ropes were anchored in the elevator shaft, to the fractured ends on the top sections, were the same length of 12-1/2 feet.

Figures 10 and 11 show the top and bottom fractured strand ends, respectively, of the No. 2 wire rope failure.

Figures 12, 13 and 14 show the close-up of the 3rd, 4th and 7th wire strand fractured ends, counting from the top in Figure 11, of wire rope failure No. 2.

Figures 5, 6 and 7 of wire rope failure No. 1, and Figures 12, 13 and 14 of wire rope failure No. 2, show nicking and flattening of the outer layer wires at the fracture site. Abrasion (flat wire areas) of the wire rope is also evident in these Figures.

Breaking Strength of Wire Ropes

Zinc poured 5/16 inch diameter open sockets were applied to both ends of a five (5) foot length of the wire rope to be tested. The wire ropes were subjected to a breaking strength test on a 12,000 pound tensile machine at a cross head speed of .1 inch/minute.

Test No.	Rope No. & Section	Maximum Load (Pounds)	Location of Strand Fractures
1	1-1st end	5,850	6 in socket
2	1-Center	5,200	All in socket
3	1-2nd end	7,550	5 in socket
4	1-From Top Fracture	5,600	4 at socket
5	1-From Bottom Fracture	6,200	6 in socket
6*	2-1st end	4,450	All pulled out of socket
7	2-Center	5,800	6 in socket
8	2-2nd end	5,600	All in socket
9	2-From Top Fracture	5,300	All in socket
10	2-From Bottom Fracture	6,700	7 in socket

*Test result disregarded

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IENT'S No.

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REPORT

May 24, 1973

METALLOGRAPHIC EXAMINATION:

A metallographic specimen was prepared of an outside fractured rope wire from the No. 1 and No. 2 wire rope failures.

Figures 15 and 16 show the typical longitudinal strand wire microstructure of wire ropes No. 1 and No. 2, respectively.

The rope microstructure appears typical of a cold drawn traction steel.

CONCLUSIONS:

In our opinion, the following conclusions can be made from this examination:

1. The 5/16 inch diameter wire ropes failed because of impact damage to the wire ropes which caused nicking and flattening of the outer layer wires. This damage greatly reduced the breaking strength of the wire ropes and resulted in the fracture of the rope wires at the location of damage, when the wire ropes were subsequently put in service.

   The fact that both wire ropes No. 1 and No. 2 showed damage at the failure at the same distance from the anchored wire rope ends, indicate that the impact damage was done simultaneously to both wire ropes by an unknown object.

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LABORATORY No. 734872

CLIENT'S No.

ORDER No. NO-1210

REPORT

May 24, 1973

2. The Federal Specification RR-W-410C, Table 23, Type 2 elevator, Class 8 x 19 traction steel, fiber core, shows a minimum breaking strength for a 5/16 inch diameter wire rope of 5,600 pounds.

   There were a total of ten (10) breaking strength tests performed on the wire ropes, in which the No. 6 test on wire rope No. 2 was disregarded because it pulled out of the socket. Only test No. 2 on wire rope No. 1, with a value of 5,200 pound (400 pounds under the specification) and test No. 9 on wire rope No. 2, with a value of 5,300 pounds (300 pounds under the specification) were below the minimum specification of 5,600 pounds. The remaining seven (7) test results ranged from a minimum of 5,600 pounds to 7,550 pounds, all of which met the breaking strength specification.

3. No manufacturers identification was observed for the wire ropes.

4. No unusual metallurgical defects of the rope wires microstructure were detected which could have been a contributory cause of failure.

PITTSBURGH TESTING LABORATORY

R. P. Kiste, Manager
Metallurgical Department

RPK/dla
2 - Client
Attn: Mr. Rizzo

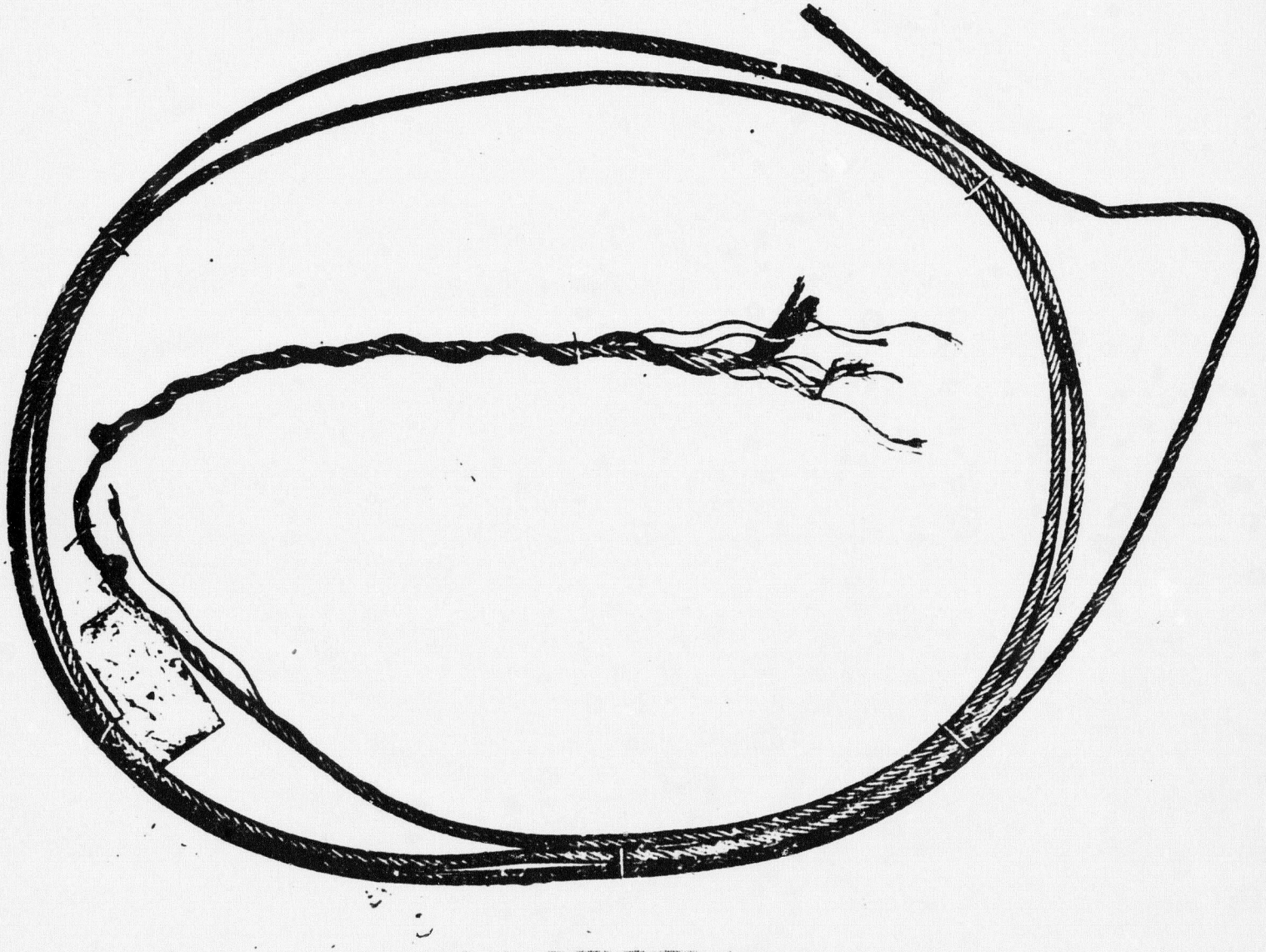

Figure 1: Photograph of the as-received top fractured section of the No. 1 wire rope failure.

NO-1210

295A

Lab. No. 734872

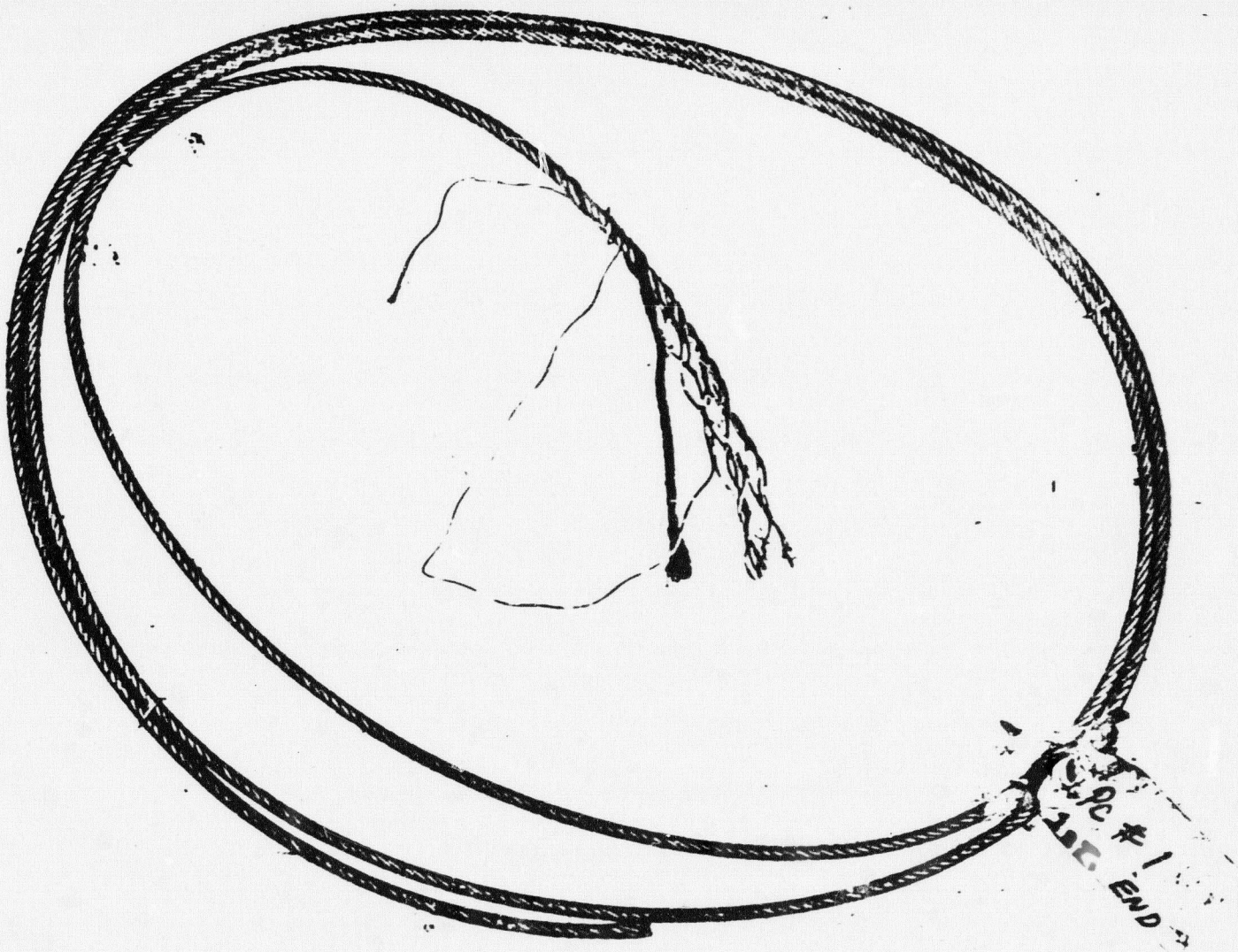

Figure 2: Photograph of the as-received bottom fractured section of the No. 1 wire rope failure.

NO-1210

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296A

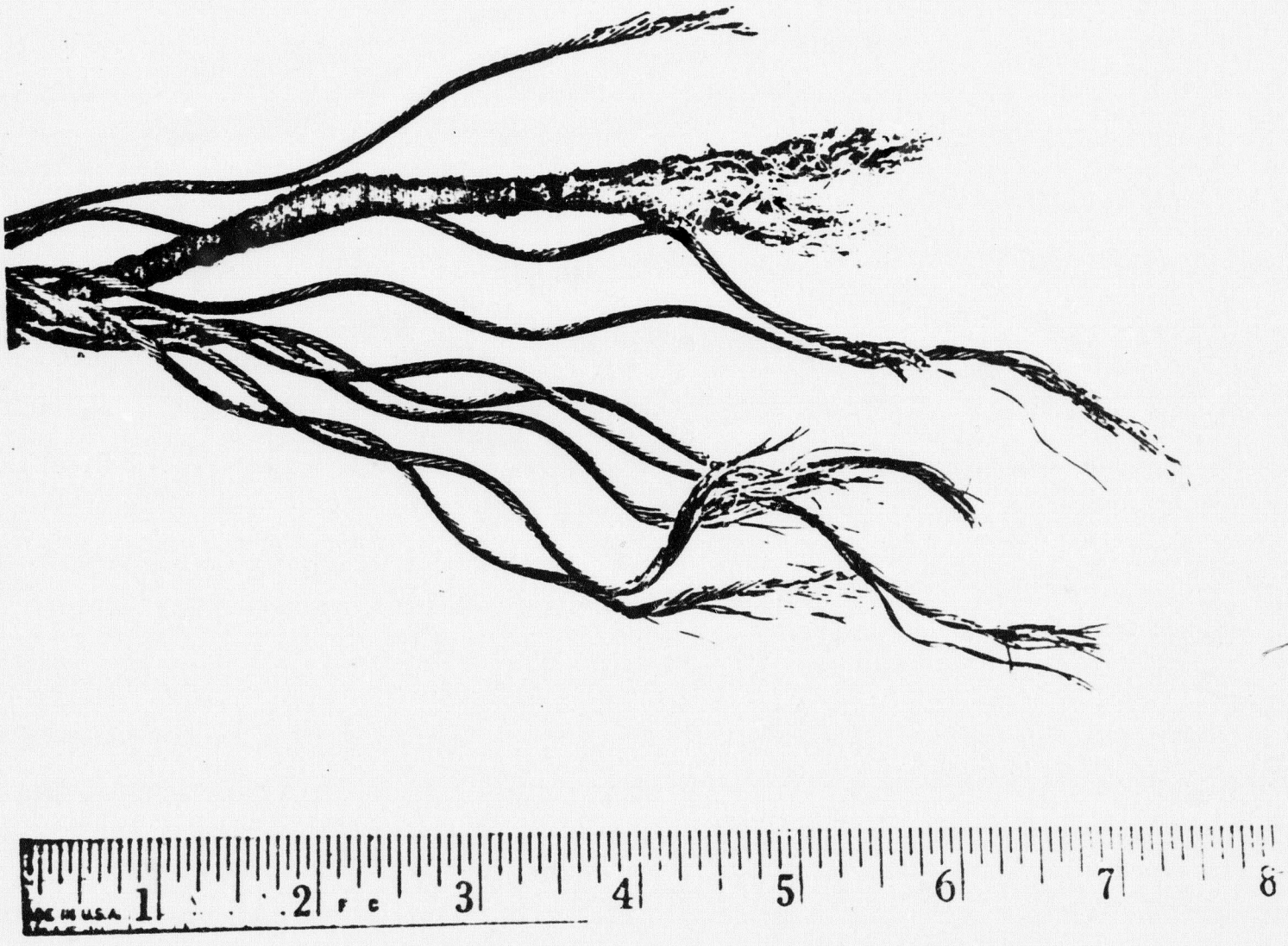

Figure 3: Photograph of the top fractured strand ends of the No. 1 wire rope failure.

NO-1210

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297A

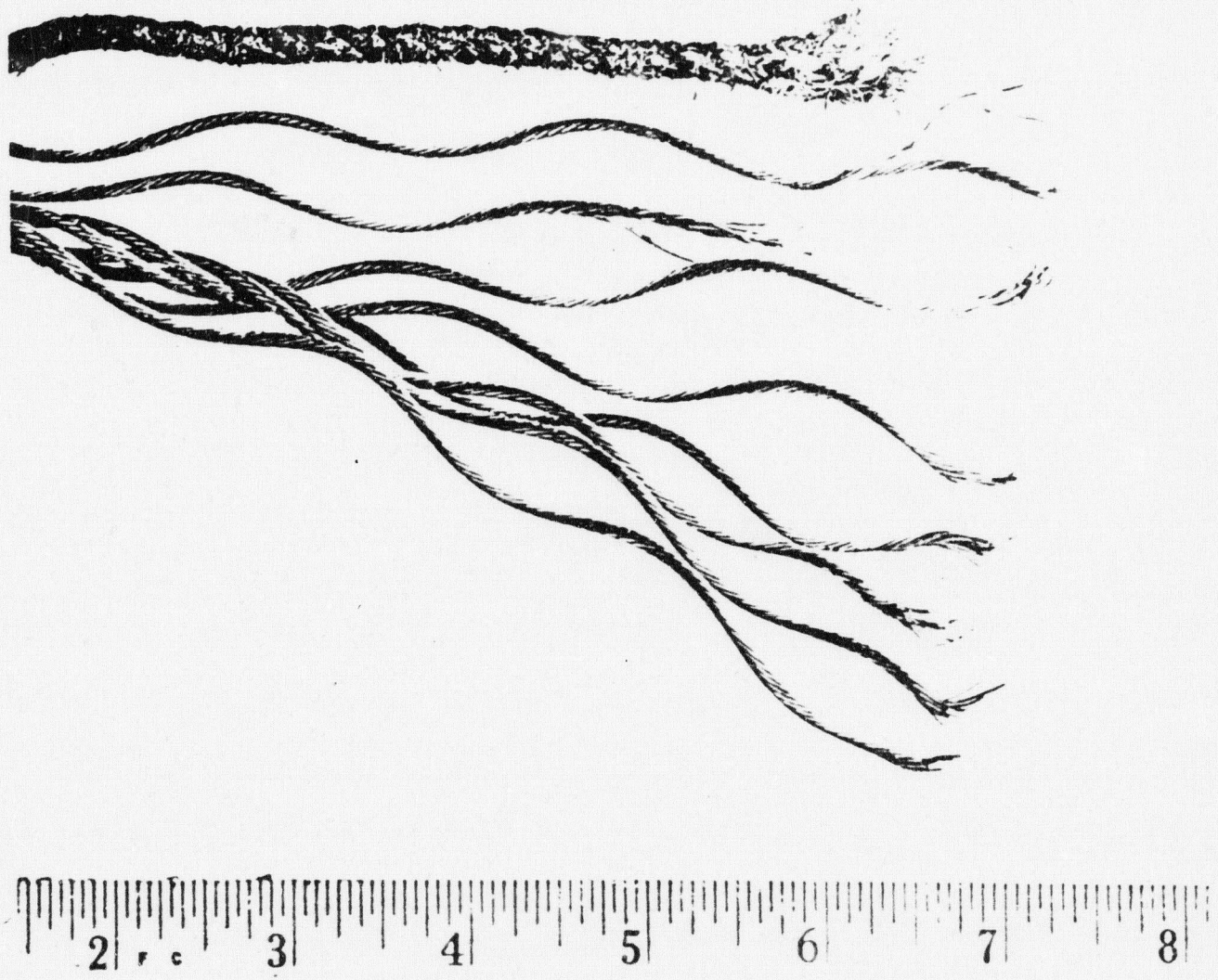


Figure 4: Photograph of the bottom fractured strand ends of the No. 1 wire rope failure.

NO-1210

Lab. No. 734872

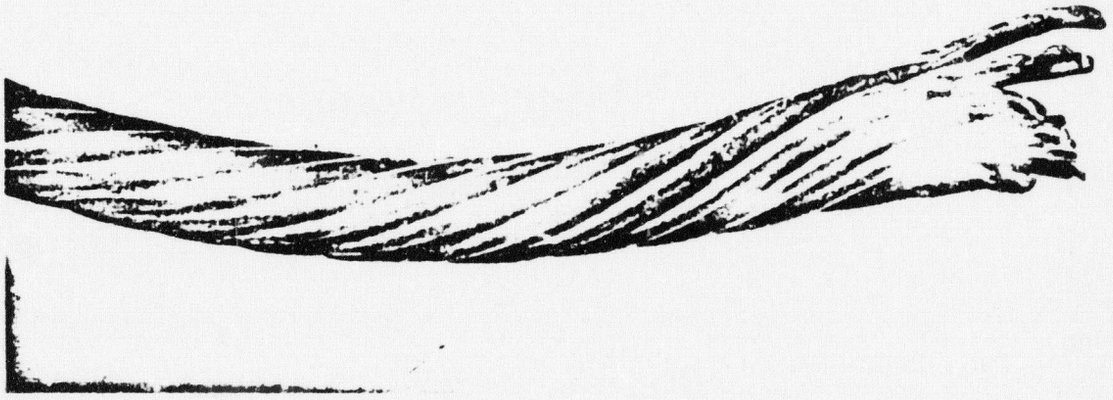


Figure 5: Photograph of a wire strand fractured end of the No. 1 wire rope failure.

Magnification 7X

NO-1210 Lab. No. 734872

Figure 6: Photograph of a wire strand fractured end of the No. 1 wire rope failure.

Magnification 7X

NO-1210

Lab. No. 734872

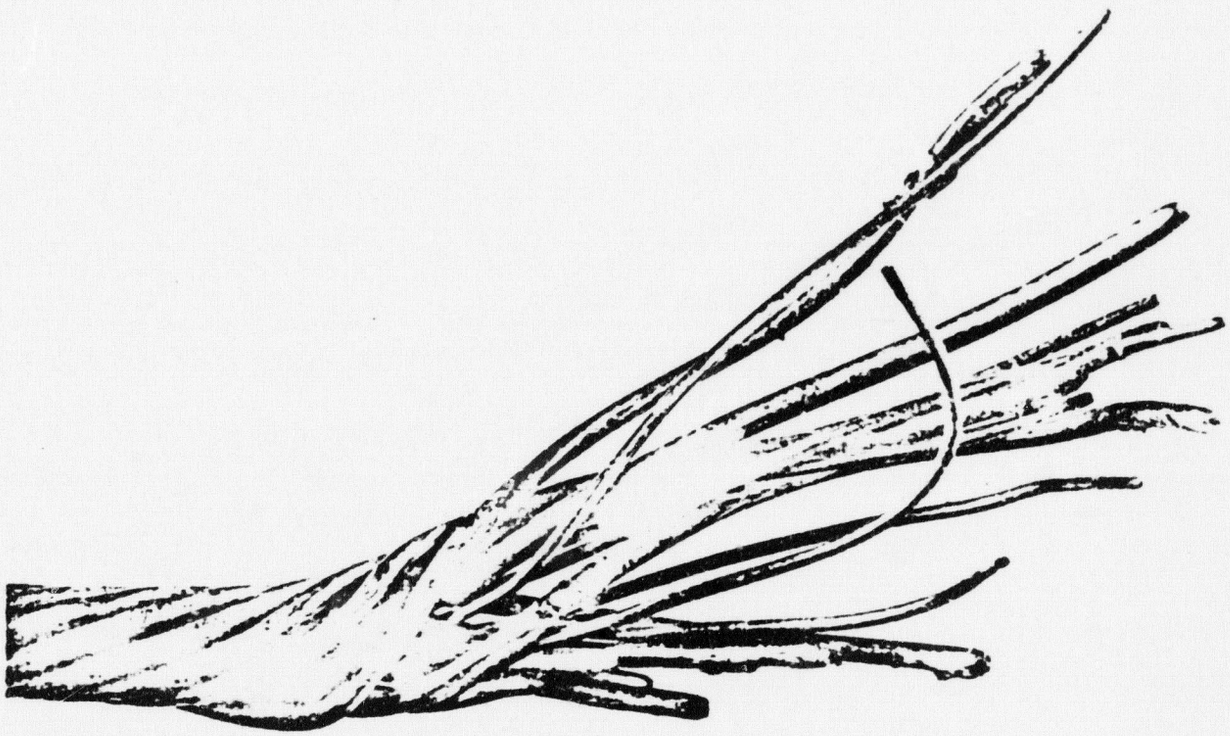


Figure 7: Photograph of a wire strand fractured end of the No. 1 wire rope failure.

Magnification 7X

NO-1210

Lab. No. 734872

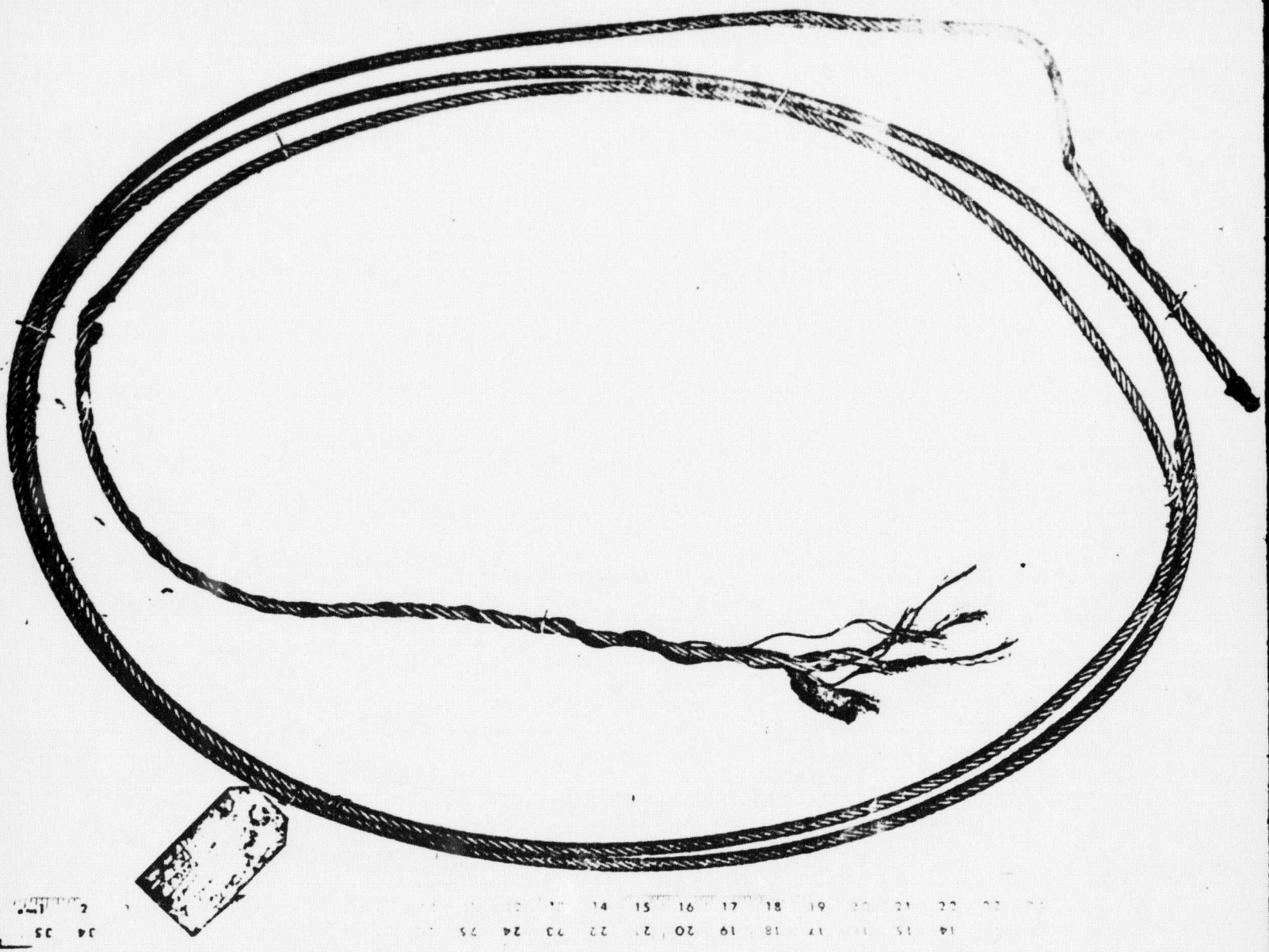


Figure 8: Photograph of the as-received top fractured section of the No. 2 wire rope failure.

NO-1210

Lab. No. 734872

Figure 9: Photograph of the as-received bottom fractured section of the No. 2 wire rope failure.

NO-1210

Lab. No. 734872

303A

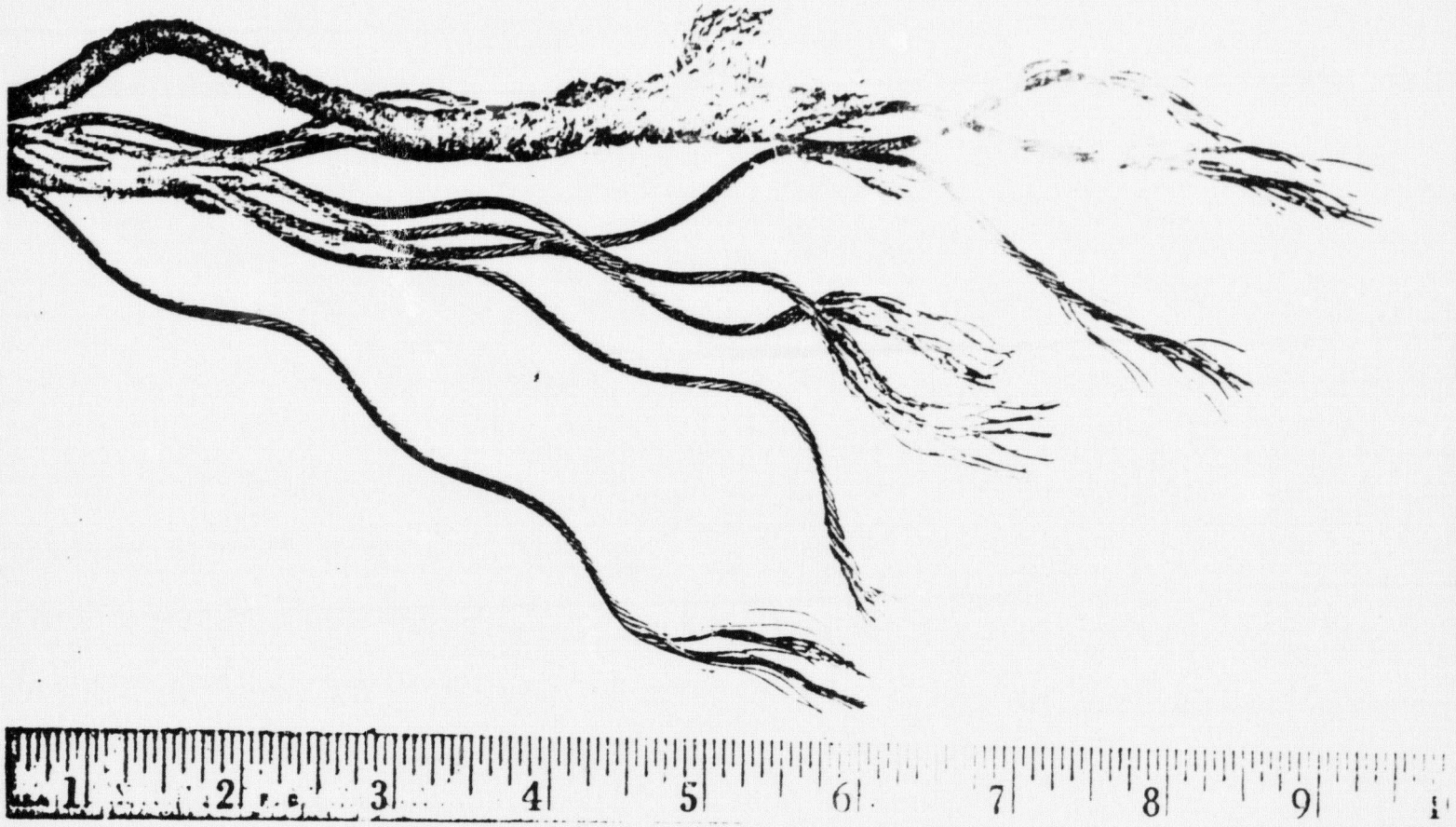


Figure 10: Photograph of the top fr[illegible] and ends of the No. 2 wire rope fa[illegible]

NO-1210 [illegible]. No. 734872

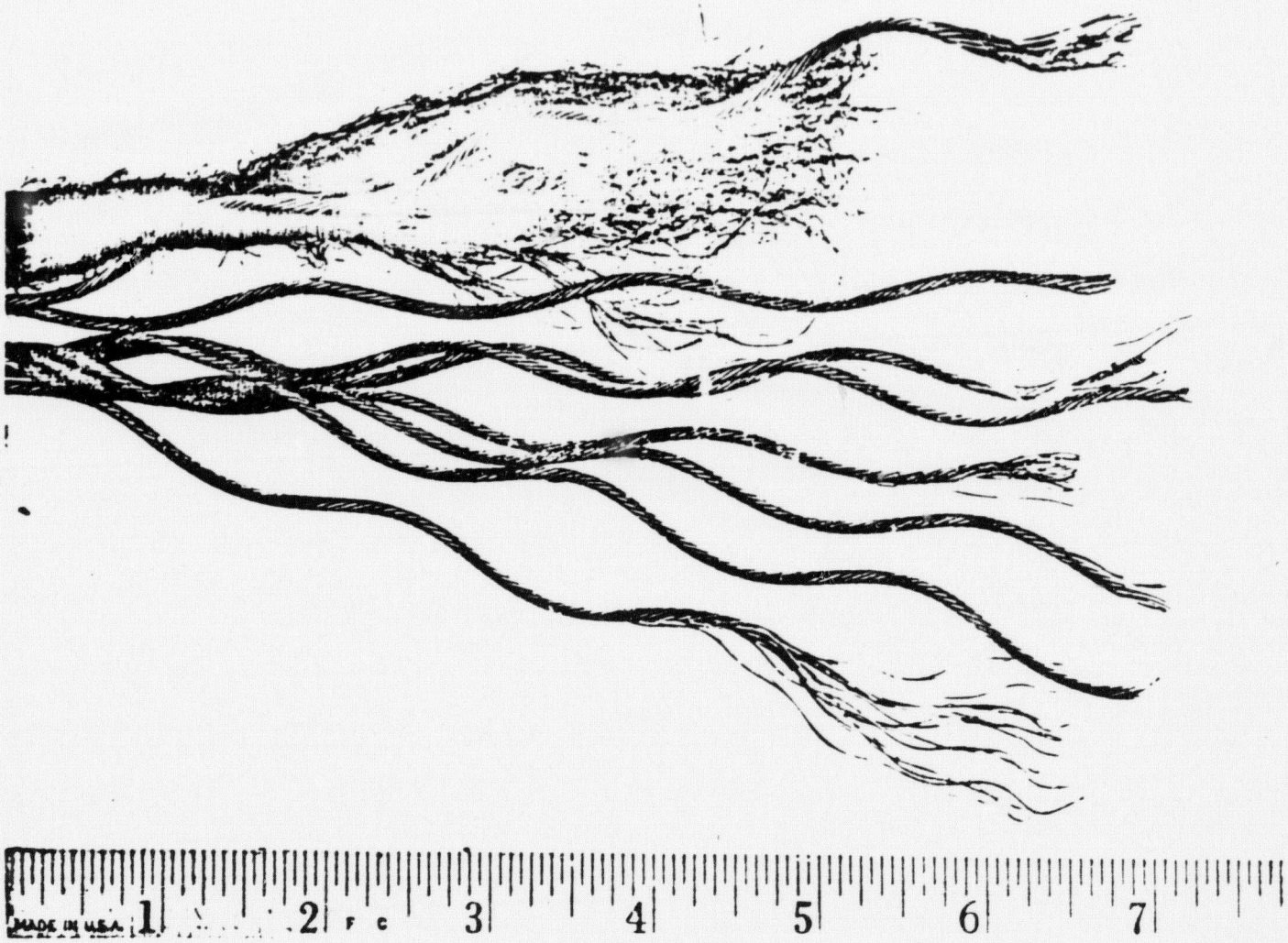


Figure 11: Photograph of the bottom fractured strand ends of the No. 2 wire rope failure.

NO-1210

Lab. No. 734872

305A

Figure 12: Photograph of a wire strand fractured end of the No. 2 wire rope failure.

Magnification 7X

NO-1210 Lab. No. 734872

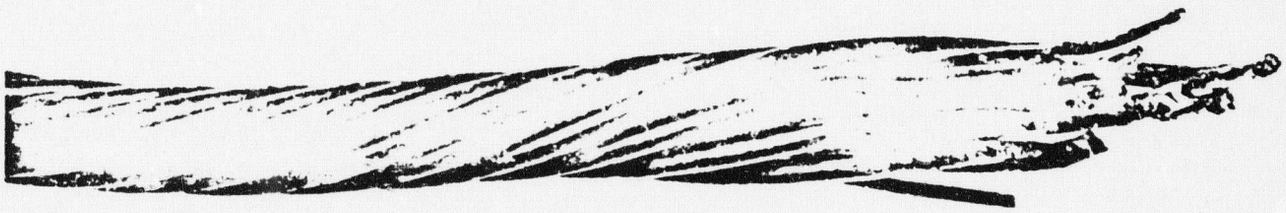


Figure 13: Photograph of a wire strand fractured end of the No. 2 wire rope failure.

Magnification 7X

NO-1210 Lab. No. 734872

Figure 14: Photograph of a wire strand fractured end of the No. 2 wire rope failure.

Magnification 7X

NO-1210

Lab. No. 734872

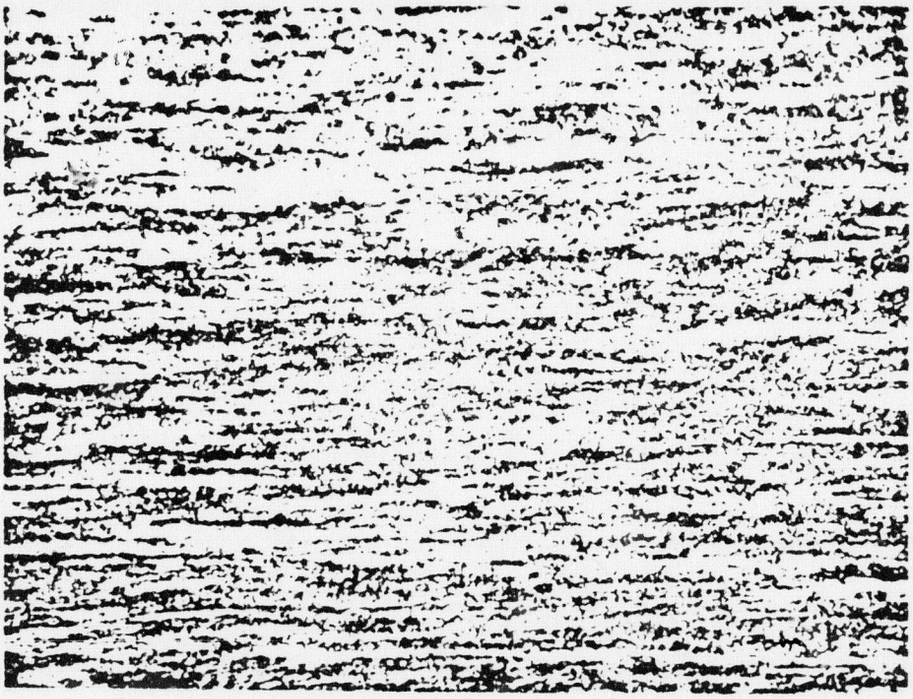


Figure 15: Photomicrograph of the typical microstructure of a strand wire from the No. 1 wire rope.

Magnification 500X Nital Etch

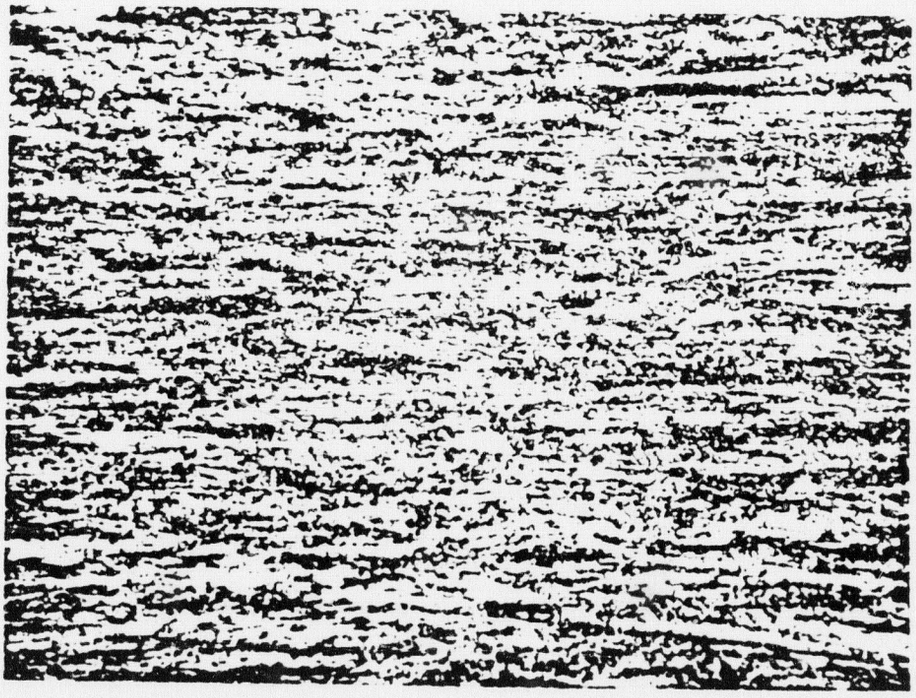


Figure 16: Photomicrograph of the typical microstructure of a strand wire from the No. 2 wire rope.

Magnification 500X Nital Etch

EXHIBIT #44 - SKETCH OF GANTRY CRANE

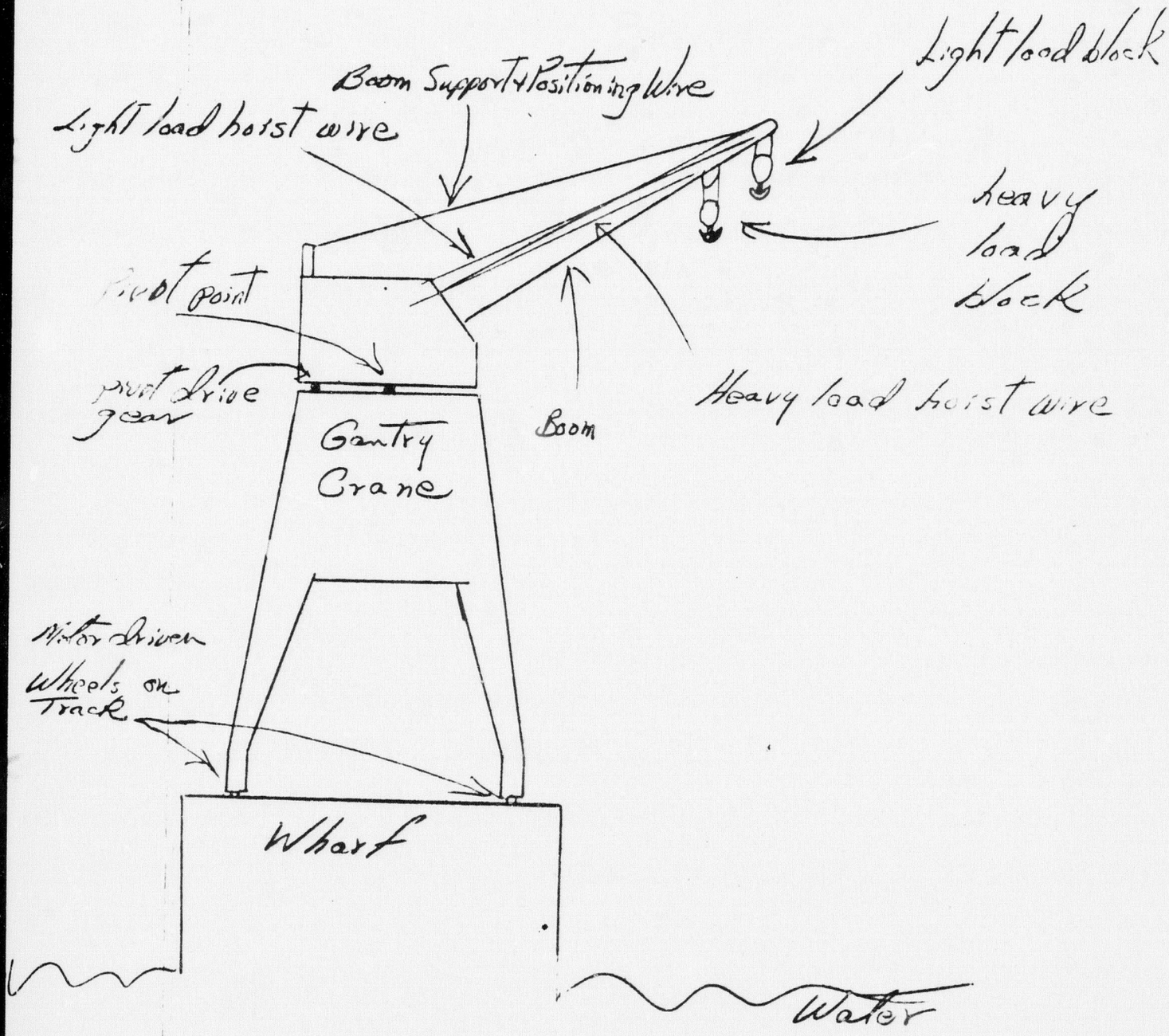
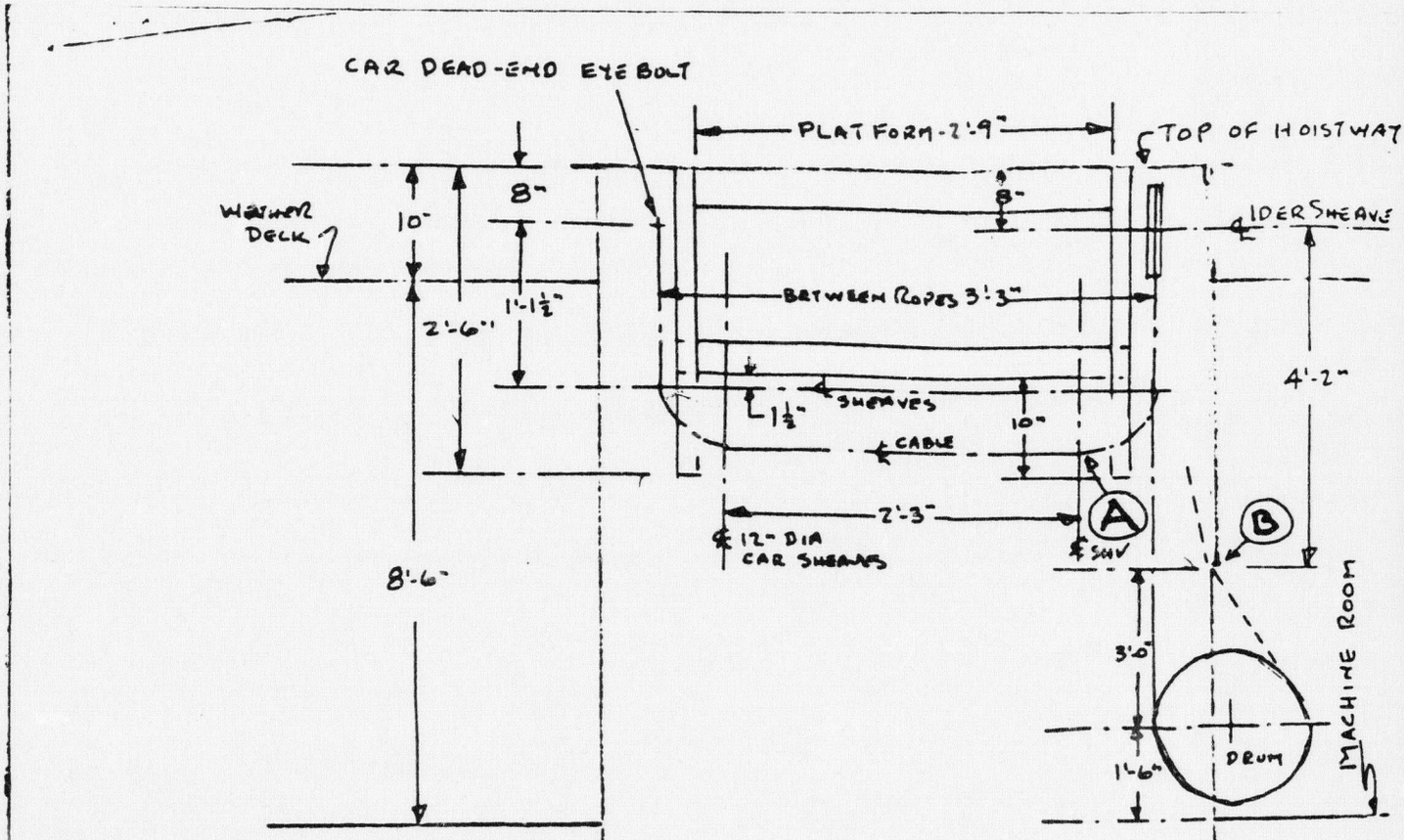


EXHIBIT "F" - DIAGRAM OF THE PLATFORM STOPPED AT THE TOP OF THE SHAFT



LENGTH OF CABLE - CAR AT TOP

EYE BOLT TO PITCH LINE CAR SHV	1'-1½"	
25% OF 12" CAR SHV CIR	9⅜"	
℄ ONE CAR SHEAVE TO ℄ OF OTHER	2'-3"	
TOTAL DISTANCE - EYE BOLT TO (A)		4'-1⅞"
LENGTH OF CABLE FROM (A)		
25% OF 12" SHV CIR	9⅜"	
℄ CAR SHEAVE TO ℄ IDER	1'-1½"	
50% OF IDLER CIR	1'-6¾"	
℄ IDLER SHV TO (B)	4'-2"	7'-7⅝"
TOTAL DISTANCE EYEBOLT TO (B)		11'-9½"

FOR EVERY FOOT THE CAR IS BELOW THE TOP ADD ONE FOOT TO (A) DISTANCE AND TWO FEET TO (B) DISTANCE.

TRUNK OF ENGINEER'S PLATFORM HOIST FOR LYKES BROS

ENERGY ELEVATOR CO

CH-62801/4

DETAIL SHOWING CAR PLATFORM STOPPED AT TOP OF HOISTWAY

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Appendix

IS HEREBY ADMITTED.

DATED:

Attorney for

RECEIVED

SEP 10 1976

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19 RECTOR ST., N.Y., N.Y. 10006